

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 10, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, June 10, 2004 at 12:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Morris K. Dunlap, Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr. (In @ 1:04); Gary K. Gibbs; Bud Hentzen; M.S. Mitchell; Harold Warner Jr.; Denise Sherman and Frank Garofalo. Bob Hernandez, Elizabeth Bishop and Bill Johnson were not present. Staff members present were: Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jamsheed Mehta, Transportation Supervisor; and Rose Simmering, Recording Secretary.

❖ PLANNING COMMISSION ITEMS

1. Briefing on the moratorium on off-site signs, presentation by Kurt Schroeder.

Recommendations: Provide the City Council with input on off-site billboard regulation.

Background: Recently, several large off-site billboard signs have been legally permitted and erected in locations that have generated a significant number of citizen and neighborhood association complaints and concerns. These signs were near residential areas and surrounded by commercial and office development that was also controlled by zoning protective overlays such as Community Unit Plans and/or Planned Unit Developments (further restricting underlying zoning for both allowed uses and aesthetics). Permit approvals were granted based on compliance with all Sign and Zoning Code requirements controlling the placement and location of off-site billboard signs.

Due to the number of complaints received about the above-referenced billboard signs, the City Council passed a four-month **"MORATORIUM ON THE PROCESSING OF CERTAIN OFF-SITE SIGN PERMITS"** (see attached) at its May 4, 2004 Council meeting. The 4-month moratorium allows time to conduct a study of billboard sign regulations, to obtain public comment on current or proposed billboard sign regulations, and to develop and adopt any appropriate Sign or Zoning Code amendments relating to off-site billboard signs.

On May 4, Council also directed staff to: (1) prepare a workshop agenda item for May 25, 2004; (2) present the issues to DABs as soon as possible to receive their input; and (3) return to City Council in a subsequent workshop prior to drafting proposed new Sign and/or Zoning Code regulations for formal Metropolitan Area Planning Commission review/recommendation and final City Council approval.

Analysis: There are approximately 300 existing off-site billboard signs located within Wichita. A significant number of these signs are 25-30+ years old. Many of these signs were on lots annexed into the City over the past 30 years, and were installed in the County when there were no County off-site sign regulations. Many existing billboard signs are therefore "legally non-conforming" to current City standards/regulations.

On May 25, 2004, staff presented a summary of billboard regulation/issues and current billboard status/locations to the City Council in a Council workshop. During the workshop presentation, the Council directed staff to present similar information to the DABs, and to obtain input about off-site billboard regulation, along with any general suggestions for amendments to current Sign Code or Zoning Code requirements. A "Summary of Off-Site Billboard Regulations" is attached for DAB review.

Recommendation/Actions: It is recommended that the MAPC provide input about off-site billboard regulation for City Council review.

June 4, 2004

Summary of Off-Site Billboard Regulations

Zoning Classification Requirements

Zoning classification where allowed: "LC" Limited Commercial, "GC" General Commercial, "LI Limited Industrial" or "GI General Industrial".

Zoning overlay restrictions per UZC: - Not allowed by UZC in approved CUPs.

- May be allowed in zoning POs associated with a rezoning request, depending on approved conditions or general requirements.
- May be allowed in approved PUDs depending on approved conditions or general requirements.
- Allowed in Delano Overlay District with design review approval.
- Allowed in Old Town Overlay to advertise overlay district businesses/events.
- Airport Overlay Hazard Areas may restrict certain locations near airports.

- Other potential overlay restrictions:
- Since these signs are considered structures, flood hazard zones may also restrict certain locations.
 - Historic districts and required historic environs reviews may also restrict certain locations.

Sign Code - Allowed Size and Height

- Maximum sign face size: 825 square ft. *including* allowed extensions outside rectangular sign face.
- Max. sign face rectangular dimension: 48' wide by 14' high (672 square ft.).
- Max. sign height above grade: 30 ft.

Exceptions to height:

Top of sign may be 14' above rail/barrier of an adjacent elevated roadway/highway (or up to 20' with zoning administrative adjustment).

Bottom of sign may be 8' above a roof or roof parapet of single story building when the sign is located within three ft. of a building, or if the sign is cantilevered over the building (top of sign may not be higher than 26' above the roof or parapet).

Sign Code - Prohibited Locations

- No closer than 660' from the sign to the bank lines of the Big or Little Arkansas Rivers.
- No closer than 660' K-96 Highway right-of-way from I-135 to the east City limits.

Sign Code Prohibited Locations – Continued

- No closer than 660' from the sign to any park or recreation area under the jurisdiction of any public body including the Board of Park Commissioners of the City of Wichita.
- No closer than 330' from any other off-site billboard sign facing the same direction of travel along the same street frontage (measured from points at street that are perpendicular to the center of each sign).
- Within required minimum building zoning district classification or platted setbacks for the zoning lot on which the sign is located (whichever is greater).
- Mounted on the roof of a building.
- If erected on "GC", "LI" or "GI" zoning lot, no closer than 50' from the sign to a residential structure (primary or accessory structure). If erected on an "LC" zoning lot, no closer 150' (measured perpendicular to the sign face) or no closer than 75' (measured parallel to the sign face) to a residential structure (primary of accessory structure; the perpendicular measurement shall extend forty-five degrees to either side of the perpendicular line).
- No off-site sign shall be located on any "LC" zoning lot that is not part of at least 300' continuous linear feet of commercial or industrial zoning ("continuous" is measured with lot zoning extended to street centerline).

Sign Code – Maximum Number in Mile

Notes: *A mile section is the approximate mile between arterial mile line roads. For purposes of measurement and maximum number of off-site signs allowed within a given mile, only those signs that face the direction of travel are counted.*

LC zoning shall not be considered for linear measurement purposes unless the LC zoning is adjacent to an arterial street or expressway.

When located on LC lots: At least 1,500 linear feet of commercial or industrial zoning within the mile to get the first off-site sign on an "LC" zoned lot (NOTE: While off-site signs are NOT allowed in CUPs, underlying zoning within CUP is counted in the minimum linear zoning calculation).

When at least 3,000 linear feet of commercial or industrial zoning within the mile, a second off-site sign on an "LC" zoned lot may be approved (NOTE: While off-site signs are NOT allowed in CUPs, underlying zoning within CUP is counted in the minimum linear zoning calculation).

When at least 4,500 linear feet of commercial or industrial zoning within the mile, a third off-site sign on an "LC" zoned lot may be approved (NOTE: While off-site signs are NOT allowed in CUPs, underlying zoning within CUP is counted in the minimum linear zoning calculation).

When located on GC, LI or GI lots: No more than one off-site sign facing a direction of travel for each 500 linear feet of street having GC, LI or GI zoning adjacent thereto. No more than five in a mile for adjacent GC or LI zoning, and no more than eight in a mile for GI zoning.

KURT A. SCHROEDER, SUPERINTENDENT OF CENTRAL INSPECTION presented a report.

WARNER Is there any notice requirement now for a new sign? For example, the one that is at 21st and Webb, did they have to notify anybody or do you just come in and get the permit and put the sign up?

SCHROEDER That is right. There is no notification provided they meet all the Sign Code requirements and the zoning requirements. They come get a permit and get approved, and it can be erected.

GAROFALO The complaint out there on Tyler Road and 21st Street; is that the complaint that precipitated this moratorium?

SCHROEDER Yes, 21st and Tyler Road was significant.

GAROFALO Is that zoned "LC" Limited Commercial?

SCHROEDER Yes, that is on a "LC" Limited Commercial lot, but it is not in an overlay of any kind, no Community Unit Plan or Protective Overlay.

GAROFALO How close is that to residential?

SCHROEDER A few 100 feet I think. That is near that Reflection Ridge office park development there.

KNEBEL It is probably only 200-300 feet. The residential zoning is a golf course. As far as residences, probably the closest would be the apartment on the south side of the street.

BARFIELD How particular is it to limit the number of signs to 300 square feet when we are annexing areas into the City that might already have existing signs?

SCHROEDER I think the way that would be, if we annexed it, that would be considered legally non-conforming. So that is probably the only way in the scenario that the number would increase.

GIBBS Are these legally non-conforming older signs? Are they exempt or grandfathered from the current regulations?

SCHROEDER Yes they are unless they are totally removed to be replaced or damaged from a storm that blows them off of their base; then they would have to be rebuilt to the new standard. If they were not in the right zoning or something, then they would have to go through a process to get zoning and all those things.

SHERMAN Are the majority of the new signs the larger signs or smaller signs?

SCHROEDER Most of the new signs are the standard bigger billboards.

SHERMAN That is the one that can be up to the 800?

SCHROEDER But the panel basically is the 14X48.

SHERMAN When you say they can have extension, what is the extension?

SCHROEDER You might see like someone draws a cowboy with a lasso and maybe that is projected above that rectangle or out to the side a couple of feet, we measure all that in.

SHERMAN Are the majority of the new signs that are larger, are they within residential areas or are they mainly highway, or closer to a main artery or similar to what is on 21st and Tyler?

SCHROEDER On this map, all these yellow dots are the existing locations of billboard signs, and probably about a 1/3 of those are junior to smaller size. Along north Broadway, there are a lot of them there in the heavy industrial. On Kellogg there are a whole bunch of them there, downtown, I-235, etc. Probably what generated a lot of the complaint is because this was kind of an unusual location at 21st and Tyler, and 21st and Webb. There aren't a lot like that.

DUNLAP I owned a sign company, and I was deeply involved in writing the current Sign Code. Joe Lang, do we run into a potential challenge on the first amendment rights on a moratorium on signage?

JOE LANG, LAW DEPARTMENT No, as long as we are not doing the moratorium or making a designation based upon the content on the signs. All signs are being treated the same regardless what they say.

DUNLAP The rewrite of the code, this is not the proper venue for doing that. I don't think the City Council has given proper direction to you. You can't get a code rewrite of this magnitude from an organization like this that knows nothing about the Sign Code or from a District Advisory Board because there are so many varieties and incremental areas in it, such as a lasso that might be above, and how do you calculate that. Then we look at the Board of Zoning Appeals, and what they used to do in terms of allowing these boards.

You have an economic development element that is pretty major because, for example, at the time that it started there was a 3 foot X 3 foot piece of ground leased for a sign that drew \$16,000 a month just for that 3 foot X 3 foot piece of ground. That happens to be at Rock Road and Kellogg. These 14 X 48 signs cannot be automatically reduced to the junior billboard signs because Winston cigarettes won't pay for that. They just won't be in our market. You can't just automatically say we won't allow a big sign because what you are saying is we won't allow that business to continue at that point.

In the future, I don't think you are going to find an eager body of sign people willing to take one down for every one they put up. But I would say that during the last rewrite of the code one of our sign companies here in town evolved into another company called Clear Channel. They elected to, and offered to, and did take down a large number signs along the river.

You mentioned another organization that might look at signs on an individual basis, and that does work. One city is Tulsa. They have a Sign Board and then the argument becomes who is on the board. It is a method that does work, and that might be implied as a separate element in our code for billboards. Their responsibility is not to look at the zoning code, but look at what is reasonable. A lighted billboard that shines on somebody's backyard at 9:00 p.m. in January...but our current Code says they can leave it on at 11:00 p.m. That is not reasonable, and a Sign Board should be able to look at things like that.

My recommendation to the City Council is that it is probably time for a review of the Sign Code in total.

MARNELL The one for one idea, I think is a bad business idea because it goes against competition, and it protects incumbents, and I think that is the wrong posture that the City should be in.

HENTZEN Does this apply to the County or just the City?

SCHROEDER This is just the City.

HENTZEN In traveling, some of these signs on the highway need some pretty good size signs before you get right downtown. When looking for an Applebee's or Cracker Barrel we would like to know where it is before we slow down or not, because you go out of your way. I believe the City is trying to figure out how to get travelers to come through Wichita but if they can't find there way around, and we don't let the entrepreneur put up the right information, we are just working against the visitors, and I don't think we should do that. I would concur with Commissioner Dunlap to the entire Sign Code being reviewed.

DUNLAP There are three codes that you are looking at; the City Code and it is overlaid by the Federal Highway Code, and then another code that was adopted by the County which is kind of a general code, and not nearly as restrictive in some areas, and in some areas it is more restrictive.

GAROFALO I think what Mr. Dunlap said makes a lot of sense to me, that you can't piecemeal the changes. I don't think you probably need to look at the entire Sign Code, but see what appropriate changes could be made.

2. Approval of April 22, 2004, May 6, 2004 and May 20, 2004 meeting minutes.

MOTION: To approve April 22, 2004, May 6, 2004 and May 20, 2004 meeting minutes with one minor correction to May 20, 2004 minutes on page 31, and noted to Recording Secretary prior to meeting.

MARNELL moved, **WARNER** seconded the motion, and it carried (11-0).

❖ **TRANSPORTATION ITEMS**
Metropolitan Planning Organization (MPO)

3. Amendment to the 2004-2008 Transportation Improvement Program (TIP).

JAMSHEED MEHTA, TRANSPORTATION SUPERVISOR presented report.

Planning Staff is requesting an update to the 2004 Transportation Improvement Program (TIP) to reflect changes to the attached projects. KDOT is requesting revisions to certain projects and we are amending the TIP to facilitate KDOT and the FHWA/FTA in their programming. There is a new bridge project that needs to be amended into the TIP and changes to existing projects are mainly in budget or funding year.

The Transportation Improvement Program (TIP) is the MPO's document identifying all significant transportation projects for the next five years throughout Sedgwick County. Federal regulations require that projects using federal funds must be prioritized and programmed in this TIP document by the MPO.

The MPO is required to update and submit the five-year transportation program to the Kansas Department of Transportation (KDOT) when there are changes to the program. The timing of this submittal is essential in order to obligate federal funds to the Wichita area projects.

Recommendation: Amend the Transportation Improvement Program 2004-2008 as presented and authorize the Chairman to sign on behalf of the MPO.

DUNLAP Under the FFY-2005 the three projects Central Street: Oliver to Woodlawn, Woodlawn to Rock and Brookside, am I understanding you right that we will be working on those streets in 2005?

MEHTA Correct, the physical year 2005 actually begins in October this year into September next year.

DUNLAP These were not in the program before?

MEHTA Oliver to Woodlawn was last year and it didn't happen, they held it back. Woodlawn to Rock was supposed to be a year or two later, it was in 2006, and they brought it to match up the other Central projects so they can do the two project in the intervening year instead of being two years apart.

DUNLAP You are aware what they just did down on Kellogg and now we are going to tear up Central at the same time, I don't think that is good. It seems reasonable to delay this for one more year, in this same area until they get Kellogg fixed.

MEHTA I wouldn't be surprised if that happens.

MITCHELL On Item 3, which is project B20, the Brookside location the description is to rehabilitate, do you know why it is rehabilitate rather than reconstruct? It was my understanding that structure would be made larger.

MEHTA Yes it is part of the street project but the kind of funding we are probably using in the bridge section only pays for the rehab portion of it so it is a combination of Bridge Funds, STP Funds, and General funds. I know this could be misleading, it is a significant rebuilding of that project.

MITCHELL Also, that is east branch of Dry Creek, west branch of Gypsum Creek is the one over between Woodlawn and Rock.

METHA That was half our problem trying to figure which Creek it was.

BARFIELD On the last one on that page, you said there was \$1 million grant that was provided for a study, is that all federal money?

MEHTA Yes, that is all federal funds.

MOTION: To amend the Transportation Improvement Program 2004-2008 as presented and authorize the Chairman to sign on behalf of the MPO.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (11-0).

4. Amendment to the 2004 Unified Planning Work Program (UPWP).

JAMSHEED MEHTA TRANSPORTATION SUPERVISOR presented report.

The Unified Planning Work Program (UPWP) is an MPO document that identifies work activities and projects that meet the local/regional transportation planning needs. The UPWP also identifies funding sources, including federal and state funds available for planning purposes.

As per KDOT directive, planning staff is requesting a minor amendment to the FY 2004 UPWP to acknowledge the \$1 million congressional grant awarded with the 2004 federal transportation authorization bill.

The congressional earmark of \$1 million has been approved for the City of Wichita and the Kansas World Trade Center to jointly conduct a feasibility study and work plan for implementing an International Trade Processing Center in the Wichita area. This effort would compliment other cooperative work efforts between the City, Sedgwick County, the North America International Trade Corridor Partnership (NAITCP-USA), the Regional Economic Area Partnership (REAP), and the Kansas World Trade Center to further the State and local efforts to promote economic development and expanded international trade opportunities that would translate into significant jobs for the region and for the State of Kansas.

Recommendation: Amend the FY 2004 Unified Planning Work Program as presented and authorize the Chairman to sign on behalf of the MPO.

MOTION: Amend the FY2004 Unified Planning Work Program as presented and authorize the Chairman to sign on behalf of the MPO.

MARNELL moved, **GAROFALO** seconded the motion, and it carried (11-0).

5. Agreement between MPO and KDOT regarding financial participation in the South Area Transportation Study.

JAMSHEED MEHTA, TRANSPORTATION SUPERVISOR presented report.

The attached agreement is between the Kansas Department of Transportation (KDOT) and the Wichita-Sedgwick County MPO identifying the funding sources, roles and responsibilities in implementing the South Area Transportation Study (SATS).

Background: The 2030 Transportation Plan recommended a transportation mobility needs study for the southeast quadrant of the metropolitan region. In 2000, Sedgwick County Commissioner Sciortino held a special meeting of stakeholders from the MPO, KDOT, KTA, Sedgwick County, and the Cities of Wichita, Derby, Haysville, and Mulvane to discuss the scope of the project and to explore funding options. The participants decided at that time to expand the study area to include both southeast and southwest quadrants of the metropolitan area. Following the meeting, both KDOT and KTA each pledged \$100,000 toward the study.

Efforts to solicit contributions from the local entities ceased after the MAPD secured a \$1 million federal grant for the South Area Transportation Study in 2002. This amount is considered adequate for a planning study that will include a needs analysis, identification of infrastructure options, evaluating benefits and impacts, and route selection. KDOT has agreed to provide the 20 percent soft match in the form of Kansas toll credits.

This agreement provides the MPO with the authority to administer the South Area Transportation Study, and the City of Wichita, as the budget custodian of the MPO, to be reimbursed for eligible expenses not to exceed \$971,000.

Recommendation: Approve the KDOT-MPO agreement on the Wichita South Area Transportation Study, and authorize the Chairman to sign on behalf of the MPO.

MARNELL What does the term "Toll Credits" mean?

MEHTA Because the Kansas Turnpike, I-35 and part of I-70 through this State is a toll-way system, they are not recipients of federal highway funds from the highway trust funds. However, every State receives so much mileage of credits from the federal government to the State, and whatever the mileage is for the Kansas Turnpike within the State of Kansas, KDOT accumulates credits for use towards other projects. They have in the past allowed us to tap into those, not for your regular kind of program, but something like this that comes along, and you don't really need to add real cash value to it, that is the best time to take advantage of their soft match, and that is acceptable to federal highway.

MOTION: Approve the KDOT-MPO agreement to the Wichita South Area Transportation Study and authorize the Chairman to sign on behalf of the MPO.

MARNELL moved, DOWNING seconded the motion, and it carried (11-0).

❖ **SUBDIVISION ITEMS**

6. **Items 6-1 to 6-2 may be taken in one motion unless there are questions or comments.**
Consideration of Subdivision Committee recommendations from the meeting of

6-1. **SUB2004-57 – One-Step Final Plat – KENNY ROGERS ADDITION, located on the east side of Hillside and south of 53rd Street North.**

NOTE: The applicant requests a zone change (ZON 2004-23) from SF-20, Single-Family Residential to LC, Limited Commercial. This site is located in the County adjoining Wichita's city limits and annexation is required. A Community Unit Plan (CUP 2004-14, DP-275) has also been proposed.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed.
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by City Council, the zone change will need to be approved.
- C. City water services are available to serve the site. The applicant shall guarantee the extension of sanitary sewer to serve the lot being platted. **An off-site sewer easement is needed.**
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **City/County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
An off-site drainage easement is needed.
- F. **County Surveying** advises that bearings on the preliminary plat do not match bearings on the final plat.
- G. The plat denotes one opening along Hillside. **Traffic and County Engineering requests the alignment of the proposed opening with the northernmost opening for the school across Hillside.**
- H. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of Kenny Rogers Commercial CUP (CUP 2004-14, DP-275).
- I. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.

- J. The signature line for the City Clerk needs to be revised to reference "Karen Sublett".
- K. The MAPC signature block needs to reference "Ronald L. Marnell, Chair".
- L. As required by the CUP, a wall easement needs to be platted around perimeter property lines. The easement shall be platted separately from the 20-ft utility easement.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **MCKAY** seconded the motion, and it carried (11-0).

6-2. **SUB2004-42 – Final Plat – YODER AIRPORT THIRD ADDITION, located west of 247th Street West, on the south side of U.S. Highway**

NOTE: This unplatted site is located in the County in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan. It is located in the Garden Plain Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **County Engineering has approved the drainage plan. A drainage easement is needed across the northwest portion of Lot 1.**
- D. The Applicant is advised that the building setback must be 150 feet from the centerline of U.S. 54 to conform with the Zoning setback standards.

- E. Per **Sedgwick County Fire Department**, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
- F. The width should be denoted of the unplatted strip on the south side of Lot 8.
- G. The north line of Reserve A needs to be a solid line.
- H. The northeast corner of the section is labeled as northwest corner.
- I. The applicant shall guarantee the installation of the private street to the 36-ft rock suburban street standard. As private improvements, such guarantee shall not be provided through the use of a petition.
- J. A covenant shall be submitted regarding the private street, which sets forth ownership and maintenance responsibilities. The plat's text shall reference the platting of the reserve for private street purposes and shall state which specific lots are to be accessed by the reserve.
- K. **GIS** needs to comment on the street name. **Bonanza Ct needs to be revised to Bonanza Cir.**
- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserve shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **MCKAY** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — VACATION ITEMS**
Items 7-1 to 7-10 may be taken in one motion, unless there are questions or comments.

7-1. VAC2004-18 – Request to Vacate 24th Street North Right-of-Way.

APPLICANTS:

Victor Staatz, Chester & Teresa Majors, Rosie DeFoor,
Gloria Contreras, Charles & Edith Dvorak, Michael & Linda Kracke
Michael & Laura Pivonka, Fayburn & Florence Parish

LEGAL DESCRIPTION:

(A) The undeveloped portion of 24th Street North (created by condemnation ordinance #22-783) abutting the south sides of Lots 12 & 13, Block A, Community Addition, the north sides of Lots 1 & 12, Block C, Community Addition, abutting the Salina Avenue ROW on its west side and the Burns Avenue ROW on its east side, as recorded with Wichita, Sedgwick County, Kansas

(B) The undeveloped portion of 24th Street North (created by condemnation ordinance #22-783) abutting the south sides of Lots 12 & 13, Block B, Community Addition, the north sides of Lots 1 & 21, Block D, Community Addition, abutting the Burns Avenue ROW on its west side and the Woodland Avenue ROW on east side, as recorded with Wichita, Sedgwick County, Kansas

LOCATION:

Generally southwest of the 25th Street North & Arkansas Street intersection, more specifically southwest of Schell Park at 24th Street North & Woodland.

REASON FOR REQUEST:

Undeveloped ROW, revert to private use

CURRENT ZONING:

Site and surrounding properties are zoned "SF-5" Single-family residential

The applicants are requesting consideration to vacate two undeveloped sections of the 24th Street North ROW. That approximately 47-foot wide (x) 270-foot long section between, west to east, Salina Avenue and Burns Avenue and that approximately 47-foot wide (x) 270-foot long section between, west to east, Burns Avenue and Woodland Avenue. Between Salina, Burns and Woodland Avenues, 24th Street North abuts four residential lots on its north side and four residential lots on its south side. All of the abutting property owners have signed the application and petition to vacate the sections of 24th Street North as previously described.

The sections of 24th Street North proposed to be vacated were originally shown as an "Exception" on the Community Addition plat, which was recorded January 25, 1954. The plat's text does not mention any of the "Exceptions" shown on the plat. The City of Wichita's Board of Commissioners adopted condemnation ordinance #22-783, on April 3, 1957; this created the described portion of the 24th Street North ROW. This portion of 24th Street North was never developed, except for a curb cut and drive entrance (paved) onto Woodland. The ROW is currently grass and trees with the abutting property owners using it as access to garages or for vehicle parking/storage. 24th Street North is classified as a residential road. The portion of ROW proposed to be vacated does not match the abutting and platted 24th Street's 60-foot width. There are sewer lines crossing, north to south, the 24th Street North ROW, but no water. Water & Sewer has requested that 20-foot of the ROW, 10-foot on either side of the sewer lines, be retained as a sewer easement. There are utility poles in the ROW; retention of a portion of the ROW as easement or relocation of the utilities would be per the franchised utilities recommendation. Setbacks are per the current UZC for the "SF-5" zoning district, but would become interior side yard setbacks, per the current UZC (6-foot), and would move with the new property lines created by the vacated ROW, if it is approved and the recommended conditions are met. Reversion rights of the vacated 24th Street ROW would go to the applicants.

NOTE: At the May 27, 2004 Subdivision Committee meeting one of the applicants withdrew their support of the vacation request; the withdrawing applicants' lot (Lot 21, Block D, Community Addition) is located between the Woodland – Burns portion of 24th Street North. By withdrawing their support, the portion of 24th Street North between Woodland and Burns (per the legal description; (B) on the front page of the Staff report) cannot be vacated. The portion of 24th Street North between Burns and Salina (per the legal description; (A) on the front page of the Staff report) can still be vacated, with conditions, as long as no one protests.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the 24th Street ROW, created by condemnation ordinance #22-783, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portions of the street ROW created by condemnation ordinance and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the street ROW created by condemnation ordinance #22-783, described in the petition should be approved with conditions;
- (1) The vacation of the portion of 24th Street North between Woodland and Burns, abutting Lots 12 & 13, Block B (north) and Lots 1 & 21 (south), Block D, all in the Community Addition will not proceed to the WCC until all abutting property owners agree to vacate and all conditions are met.

- (2) The portion of 24th Street North between Salina and Burns, abutting Lots 12 & 13, Block A (north) and Lots 1 & 12 (south), Block C, all in the Community Addition may proceed to the WCC for final action when all conditions are met.
- (3) Retain 10-foot on either side of the existing sewer lines as 20-foot sewer easements, within the vacated ROW.
- (4) Per the recommendation of the franchised utilities, retain a 20-foot portion of the vacated ROW as utility easements, where franchised utilities are located.
- (5) Provide a survey for the location of the public and franchised utilities
- (6) Dedicate by separate instrument an additional 2-feet, per abutting lot to the vacated 24th Street North ROW, to the platted 16-foot utility easement, north-south, located between Lots 1 & 12, Block C, of Lots 12 & 13, Block A, Lots 1 & 21, Block D and Lots 12 & 13, Block B, all in the Community Addition.
- (7) Reversion rights of vacated ROW are with the abutting property owners; the applicants.
- (8) Setbacks will be the current UZC's interior side yard setbacks.
- (9) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (10) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (11) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) The vacation of the portion of 24th Street North between Woodland and Burns, abutting Lots 12 & 13, Block B (north) and Lots 1 & 21 (south), Block D, all in the Community Addition will not proceed to the WCC until all abutting property owners agree to vacate and all conditions are met.
- (2) The portion of 24th Street North between Salina and Burns, abutting Lots 12 & 13, Block A (north) and Lots 1 & 12 (south), Block C, all in the Community Addition may proceed to the WCC for final action when all conditions are met.
- (3) Retain 10-foot on either side of the existing sewer lines as 20-foot sewer easements, within the vacated ROW.
- (4) Per the recommendation of the franchised utilities, retain a 20-foot portion of the vacated ROW as utility easements, where franchised utilities are located.
- (5) Provide a survey for the location of the public and franchised utilities
- (6) Dedicate by separate instrument an additional 2-feet, per abutting lot to the vacated 24th Street North ROW, to the platted 16-foot utility easement, north-south, located between Lots 1 & 12, Block C, of Lots 12 & 13, Block A, Lots 1 & 21, Block D and Lots 12 & 13, Block B, all in the Community Addition.
- (7) Reversion rights of vacated ROW are with the abutting property owners; the applicants.
- (8) Setbacks will be the current UZC's interior side yard setbacks.
- (9) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (10) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (11) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

GAROFALO I am curious about the note on page three of the staff report that states that one of the applicants withdrew their support of the vacation request.

BILL LONGNECKER, Planning Staff That has changed. This morning the applicant that had withdrew his support came in and presented to Staff a short letter stating that they would, again, like to participate in the vacation. Now we have full participation from all the property owners abutting the Burns right-of-way.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (11-0).

7-2. VAC2004-19 – Request to Vacate Platted Easements.

OWNER/APPLICANT: Jason & Jodi Wenzel

LEGAL DESCRIPTION: Platted 20-foot easement, located on the north 10-feet of Lots 4, 5 & 6 and the south 10-feet of Lots 3 & 7, all in Block 7, Prairie Crossing Addition, (from "Bundle L" of the "Bundling Overlay"), Wichita, Sedgwick County, Kansas.

Platted 20-foot easement, located on the west 10-feet of Lot 3, except the north 10-feet thereof and the east 10-feet of Lot 7, except the north 10-feet thereof, all in Block 7 Prairie Crossing Addition, (from "Bundle L" of the "Bundling Overlay"), Wichita, Sedgwick County, Kansas

LOCATION: Generally located southwest of Central Avenue and 151st Street West, specifically on the northeast corner of Caroline and Reece Streets.

REASON FOR REQUEST: Build house.

CURRENT ZONING: Subject property and all adjacent or abutting properties are zoned "RR" Rural Residential

The applicant proposes vacation of the platted 20-foot utility easements located the north 10-feet of Lots 4, 5, & 6, the south 10-feet of Lots 3 & 7, the west 10-feet of Lot 3 and the east 10-feet of Lot 7, all in Block 7, Prairie Crossing Addition (see legal). The applicant's proposed house will cross over the described lot lines and utility easements. The applicant has received comments from City and County Public Works, City Water and Sewer and franchised utilities, which indicate no current or future need for the described utility easements in reference to the ability to service the applicant's site, Lots 3-7, and Lots 1 & 2, all in Block 7, Prairie Crossing Addition. The applicant has provided copies of a proposed substitute easement to meet comments from utility interest.

The Prairie Crossing Addition is a "Bundled" Subdivision, which was intended to provide urban size lots in the County when water and sewer are available. The applicant's lots are in "Bundle L" and the applicant owns all of "Bundle L". Attached to the Subdivision are a Restrictive Covenant and a Developer's Covenant, which require both the City and County to approve waiving, modification or termination of them. The proposed vacation removes encumbrances (e.g. the easements), which control the placement of dwellings (Developer's Covenant paragraph #5), which controls the density of residential development. Both City and County Law are reviewing the applicant's request in regards to any possible action needed in reference to the covenants. The Prairie Crossing Addition was recorded May 15, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works and other utility representatives, Planning Staff recommends approval to vacate the platted easement as shown on the exhibit with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions:

- (1) Provide Staff with a copy of the easements dedicated by separate instrument, as approved by County & City Public Works/Water & Sewer to be recorded with the Register of Deeds.
- (2) If either the Developer's Covenant or/and the Restrictive Covenant are waive, modified or terminated, the action approved by both the City and County that affects either one or both of the covenants will be recorded with the Register of Deeds.
- (3) Obtain approval from the County for placement of an alternative sewer system to serve the site.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City/County Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of the easements dedicated by separate instrument, as approved by County & City Public Works/Water & Sewer to be recorded with the Register of Deeds.
2. If either the Developer's Covenant or/and the Restrictive Covenant are waived, modified or terminated, the action approved by both the City and County that affects either one or both of the covenants will be recorded with the Register of Deeds.
3. Obtain approval from the County for placement of an alternative sewer system to serve the site.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant. All improvements shall be according to City/County Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-3. VAC2004-20 – Request to Vacate Platted Setbacks and Access Control.

OWNER/APPLICANT: 37th LLC c/o Walter Morris and Sons – Mike Boyd

AGENT: Baughman Company c/o Terry Smythe

LEGAL DESCRIPTION: See Attached Legal

LOCATION: Generally located on the southeast corner of the 37th Street North – Ridge Road interchange.

REASON FOR REQUEST: Reconfiguration of lots

CURRENT ZONING: Subject property and adjacent properties to its north and west are zoned "LC" Limited Commercial. Properties abutting the subject sites south and east side are zoned "GO" General Office.

The applicant proposes vacation of the current joint access between Lots 2 & 4, Ridge Port North Addition onto Ridge Road and the current joint access between Lots 2 & 3, Ridge Port North Addition, onto 37th Street North. The applicant is also proposing the vacation of a portion of the 100-foot setback along Lots 2's, Ridge Port North Addition, north property line. There is a proposed lot split associated with this request, which will break Lot 2 into four parcels and reconfigure Lot 4. The applicant has proposed new access for Staff review. The applicant has proposed a 35-foot setback to replace the 100-foot setback along Lot 2's north side. The proposed 35-foot setback is aligned with the existing 35-foot setback on the smaller Lots 3 & 4, Ridge Port North Addition. The subject site is part of CUP DP 237. The Ridge Port North Addition was recorded June 9, 1999.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works and other utility representatives, Planning Staff recommends approval to vacate the platted joint access control and a portion of the 100-foot platted setback, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted access control and a portion of the platted setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted access control described in the petition should be approved with conditions;
1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant, per the comments of Public Works and franchised utilities.
 2. All improvements shall be according to City Standards.
 3. Review and approval by staff and subsequent completion of the proposed Lot Split, by the applicant, including proposed 35-foot setback as described in the legal, proposed new joint access and access control, prior to the vacation case proceeding to WCC for final action.
 4. Provide Staff with approval of an Adjust or Amendment to CUP DP 237, which reflects the reconfiguration of Lot 2 and approved joint access, access control and proposed 35-foot setback.

5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant, per the comments of Public Works and franchised utilities.
2. All improvements shall be according to City Standards.
3. Review and approval by staff and subsequent completion of the proposed Lot Split, by the applicant, including proposed 35-foot setback as described in the legal, proposed new joint access and access control, prior to the vacation case proceeding to WCC for final action.
4. Provide Staff with approval of an Adjust or Amendment to CUP DP 237, which reflects the reconfiguration of Lot 2 and approved joint access, access control and proposed 35-foot setback.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-4. VAC2004-21 – Request to Vacate a Portion of a Platted Setback.

OWNER/APPLICANT: Zach's Car Wash, LLC c/o Grant Wood

AGENT: Baughman Company PA c/o Terry Smythe

LEGAL DESCRIPTION: A portion of the 40-foot platted setback as shown on the exhibit, generally located on southeast side and running parallel to the Meridian Avenue frontage of Lot 2, Block 1, Leewood Heights 3rd Addition, as recorded, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located northeast of the 53rd Street North – Meridian Avenue intersection.

REASON FOR REQUEST: Conditional Use for a Car Wash

CURRENT ZONING: Subject property and properties north and south are zoned "LC" Limited Commercial. Property west of the site, across Meridian Avenue, is zoned "LC" & "SF-20" Single-family Residential. Property east of the site is zoned SF-5" Single-family Residential.

The applicant proposes to vacate apportion of a platted 40-foot setback to place three vacuum and trash islands. Per CON2003-00046, as approved by the MAPC at their January 22, 2004 meeting; "Section III-E.2.e. of the UZC does not permit the proposed vacuum/trash receptacles to be located within the required setback. The subject property has a 40-foot platted setback, which is 20 feet greater than required by the "LC" zoning district. Therefore, the applicant proposes to vacate the platted setback so that the vacuum/trash receptacles will not be located within the required setback. Planning staff will recommend approval of vacating the platted setback at the time such application is submitted." The Leewood Heights 3rd Addition was recorded with the Register of Deeds on August 14, 1979

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portions of the platted setbacks as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.

- B. Therefore, the vacation of the portion of the easement dedicated by separate instrument and the portions of the platted setbacks described in the petition should be approved with conditions;
- (1) Vacate only that portion of the platted setback where the vacuum islands encroach. The only structures allowed in the portion of the vacated platted setback are the vacuum islands.
 - (2) Provide staff with accurate legal descriptions of the proposed portion of the vacated setback.
 - (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (4) All improvements shall be according to City Standards.
 - (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate only that portion of the platted setback where the vacuum islands encroach. The only structures allowed in the portion of the vacated platted setback are the vacuum islands.
2. Provide staff with accurate legal descriptions of the proposed portion of the vacated setback.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-5. VAC2004-22 – Request to Vacate a Drainage Easement.

OWNER/APPLICANT: Adrian & K Martin

AGENT: Certified Engineering Design PA c/o Harlan Foraker

LEGAL DESCRIPTION: That portion of the platted 35-foot temporary drainage easement lying in parts of, from northeast to southwest, the 157th Circle West ROW, Lots 14, 13, 12, 17 & 18, Block 2, "Bundle B" of the Martin Estates Addition, as recorded Wichita, Sedgwick County, Kansas.

LOCATION: Generally located southwest of the 151st Street West – Central Avenue intersection, more specifically southeast of the Shade Street – Reece Road intersection

REASON FOR REQUEST: Single-family development of the site

CURRENT ZONING: Subject property and all adjoining properties are zoned "RR" Rural Residential

The applicant is requesting consideration for the vacation of the 35-foot temporary platted drainage as described in the Legal Description. The applicant proposes the vacation of the easement to allow more room for development on Lots 14, 13, 12, 17 & 18, Block 2, "Bundle B", Martin Estates Addition. The applicant has provided an exhibit that shows the location of a proposed replacement easement. As stated on the plat's text "temporary drainage easements shall expire when an urban scale drainage plan has been approved by the City Engineer and the existing terraces have been removed." The County Public Works Engineer considers the vacation necessary, because the applicant is replacing only a portion of the entire easement. There are no sewer or water lines in the platted temporary drainage easement. The Martin Estates Addition is a "Bundled" Subdivision, which was intended to provide urban size lots in the County when water and sewer are available. The Martin Estates Addition was recorded with the Register of Deeds October 7, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted temporary drainage easement as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time May 20, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted temporary drainage easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions;
1. The applicant shall submit urban scale drainage plans for review and approval by City/County Public Works/Storm Water. These plans must be approved prior to the Vacation Case proceeding to the WCC
 2. If required by City/County Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City/County Public Works/Storm Water to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
 3. Upon approval of the urban scale drainage plan, remove the existing terraces, per the plat's text.
 4. Provide franchised utilities with any required easements made necessary by the proposed vacation.
 5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 6. All improvements shall be according to City/County Standards.
 7. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall submit plans for review and approval by City/County Public Works/Storm Water. These plans must be approved prior to the vacation case proceeding to the WCC.
2. If required by City/County Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City/County Public Works/Storm Water, to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
3. Provide franchised utilities with any required easements made necessary by the proposed vacation.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City/County Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-6. VAC2004-23 – Request to Vacate a 20-Foot Drainage and Utility Easement.

OWNER/APPLICANT: Wilson Residential Company LLC, c/o Cathy Erickson

AGENT: PEC, PE c/o Rob Hartman

LEGAL DESCRIPTION: The platted 20-foot drainage & utility easement running parallel to the 100-foot KG&E easement (dedicated by separate instrument, Misc Book 594, Page 596)), as shown on the exhibit, on Lot 1, Block 1, Wilson Estates Medical Park Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located southwest of the 21st Street North – Webb Road intersection, north of the Railroad ROW

REASON FOR REQUEST:

Align easement with abutting easement to the west

CURRENT ZONING:

Subject property and adjoining properties north and west are zoned "GO" General Office. Properties south and east of the subject property are zoned "SF-5" Single-Family Residential

The applicant is requesting consideration for the vacation of the platted 20-foot drainage & utility easement that runs parallel to the north side of a 100-foot KG&E easement (dedicated by separate instrument, Misc Book 594, Page 596) on Lot 1, Block 1, Wilson Estates Medical Park Addition. The applicant proposes to align a proposed easement with an existing drainage and utility easement on the abutting west property; Wilson Estates Medical Park 2nd Addition. The proposed replacement easement will be partially in the KG&E easement. There are no sewer or water lines in the platted easement. The Wilson Estates Medical Park Addition was recorded with the Register of Deeds January 8, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted drainage & utility easement as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage & utility easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition should be approved with conditions;
1. The applicant shall submit plans, as needed, for review and approval by City Public Works/Storm Water. These plans must be approved prior to the Vacation Case proceeding to the WCC.
 2. If required by City Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City Public Works/Storm Water to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
 3. The applicant shall submit plans, as needed, for review and approval by the franchised utilities, including Westar. If required provide franchised utilities with any required easements made necessary by the proposed vacation. These plans must be approved prior to the Vacation Case proceeding to the WCC.
 4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 5. All improvements shall be according to City Standards.
 6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall submit plans for review and approval by City Public Works/Storm Water. These plans must be approved prior to the vacation case proceeding to the WCC.
2. If required by City Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City Public Works/Storm Water, to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
3. Provide franchised utilities with any required easements made necessary by the proposed vacation.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-7. VAC2004-24 – Request to Vacate and Relocate a 20-Foot Utility Easement.

OWNER/APPLICANT: Laham Holding Company, LLC c/o Cathy Erickson

AGENT: PEC c/o Rob Hartman

LEGAL DESCRIPTION: Platted 20-foot utility easement located between Lots 4 & 5, stopping at its point of intersection with the platted 30-foot drainage & utility easement on its south side and the platted 15-foot drainage & utility easement located on its north side, all in Block 1, the Wilson Estates Medical Park 2nd Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located southwest of the 21st Street North – Webb Road intersection, more specifically southwest of the East Wilson Estates Parkway – Webb Road intersection.

REASON FOR REQUEST: Proposed boundary shift.

CURRENT ZONING: Subject property and all adjacent or abutting properties are zoned “GO” General Office

The applicant proposes vacation of the platted 20-foot utility easement located between Lots 4 & 5, Block 1, the Wilson Estates Medical Park 2nd Addition. A proposed boundary shift will reconfigure Lots 4 & 5. The easement will move with the new property/lot line. There is no water or sewer in the easement. The site is in CUP DP 260. The Wilson Estates Medical Park 2nd Addition was recorded January 8, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted easement as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions;
1. Provide Staff with a replacement easements dedicated by separate instrument that will replace the vacated easement, as approved by Public Works/Water & Sewer, to go with the Vacation Order to WCC for final action and to be recorded with the Register of Deeds.
 2. Provide Staff with a copy of the recorded Boundary Shift. If needed, provide Staff with a letter of approval for either an Adjustment or Amendment to CUP DP 260, which reflects the reconfiguration of the lots
 3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 4. All improvements shall be according to City Standards.
 5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a replacement easements dedicated by separate instrument that will replace the vacated easement, as approved by Public Works/Water & Sewer, to go with the Vacation Order to WCC for final action and to be recorded with the Register of Deeds.
2. Provide Staff with a copy of the recorded Boundary Shift. If needed, provide Staff with a letter of approval for either an Adjustment or Amendment to CUP DP 260, which reflects the reconfiguration of the lots
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

5. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-8. VAC2004-25 – Request to Vacate a Portion of a Platted 50-Foot Front Building Setback.

OWNER/APPLICANT: Next Generation Investments, LLC c/o William Smith

AGENT: Mark Savoy

LEGAL DESCRIPTION: 15-feet of the platted 50-foot setback that runs parallel to the Eisenhower Avenue ROW on the east side of Lot 9, Block 1, the Airport Industrial Park addition, as recorded, Wichita, Sedgwick County, Kansas.

15-feet of the platted 50-foot setback that runs parallel to the Eisenhower Avenue ROW on the east side Lot 10, 15-feet of the platted 50-foot setback that runs parallel to the Eisenhower Court ROW on the north side of Lot 10, Block 1, the Airport Industrial Park addition, as recorded, Wichita, Sedgwick County, Kansas.

15-feet of the platted 50-foot setback that runs parallel to the Eisenhower Court ROW on the northeast side Lot 5, Block 1, the Airport Industrial Park addition, as recorded, Wichita, Sedgwick County, Kansas.

15-feet of the platted 50-foot setback that runs parallel to the Eisenhower Court on southeast side of Lot 4, Block 1, the Airport Industrial Park addition, as recorded, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located south of Harry Street and west of Hoover Road.

REASON FOR REQUEST: 35-foot setback on all properties, more specifically off the Eisenhower Avenue – Eisenhower Court(s) intersection(s)

CURRENT ZONING: Subject property and all abutting/adjacent properties are zoned "LI" Limited Industrial

The applicant is requesting vacation of 15-feet of the platted 50-foot setbacks, as described, on Lots 4, 5, 9, & 10, Block 1, the Airport Industrial Park Addition. All the setbacks run parallel to street ROW. There was a previous case, VAC2000-30, on Lot 9, which vacated 15-feet of the 50-foot ROW on the Lot 9's south side, running parallel to Eisenhower Court. The applicant's proposal would replace the remaining 50-foot setback on Lot 9, with a consistent 35-foot setback. The applicant's proposal would give all his properties a 35-foot setback. The UZC's standard for a front yard setback for the "LI" zoning district is 20-feet, with no minimum street side setback. If approved 24 of the 28 lots in the Airport Industrial Park Addition would still retain their platted 50-foot street side setbacks; approximately 62% of the subdivision is developed. Two of the applicant's four lots are not developed. It is not unreasonable to assume future vacation request of the platted setbacks. The Airport Industrial Addition was recorded December 16, 1964.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties Planning Staff recommends approval to vacate 15-feet of the platted 50-foot setbacks as described in a legal description.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of the platted setbacks described in the petition should be approved with conditions;
- (1) Vacate 15-feet of the platted 50-foot setbacks, per the legal description, on Lots 4, 5, 9, & 10, Block 1, the Airport Industrial Park Addition, stopping at their point of intersection with the platted easements on the sites.
 - (2) Dedicate an additional 2-foot of easement, by separate instrument, to the platted 16-foot easement on Lots 4, 5, 9 & 10, Block 1, the Airport Industrial Park Addition. Provide to Staff to be recorded with the Register of Deeds along with the Vacation Order.

- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) Provide staff with a petition to pave Eisenhower Court, prior to the Vacation Order proceeding to WCC for final action.
- (5) All improvements shall be according to City Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate 15-feet of the platted 50-foot setbacks, per the legal description, on Lots 4, 5, 9, & 10, Block 1, the Airport Industrial Park Addition, stopping at their point of intersection with the platted easements on the sites.
2. Dedicate an additional 2-foot of easement to the platted 16-foot easement on Lots 4, 5, 9 & 10, Block 1, the Airport Industrial Park Addition. Provide to Staff to be recorded with the Register of Deeds along with the Vacation Order.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. Provide staff with a petition to pave Eisenhower Court, prior to the Vacation Order proceeding to the WCC for final action.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-9. VAC2004-26 – Request to Vacate Flood Control Right-of-Way.

<u>APPLICANT:</u>	Larry's Trailer Sales and Service, LLC c/o Sherry Hamilton
<u>AGENT:</u>	Baughman Company PA c/o Russ Ewy
<u>LEGAL DESCRIPTION:</u>	Condemnation Case #A-71454 as described in the attached legal description.
<u>LOCATION:</u>	Generally located northwest of the IH-235 – Broadway Avenue interchange
<u>REASON FOR REQUEST:</u>	Use of the site
<u>CURRENT ZONING:</u>	Subject property and abutting/adjacent properties north, south and west of the site are zoned "LI" Limited Industrial. Property west of the site is not zoned, but is part of the Wichita – Valley Center Floodway Control

The applicant is requesting consideration for the vacation of the approximately 6,750-square foot floodway reserve that abuts the northwest side of the applicant's property; Lot 2, Kratzke's Addition. The applicant proposes the vacation of the easement for private use. There are no sewer or water lines in the floodway reserve. The Kratzke's Addition was recorded with the Register of Deeds December 20, 1989.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the floodway reserve as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described floodway reserve and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the floodway reserve described in the petition should be approved with conditions;

1. The applicant shall submit plans, as needed, for review and approval by City Public Works/Storm Water. These plans must be approved prior to the Vacation Case proceeding to the WCC
2. If required by City Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City Public Works/Storm Water to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
3. Provide franchised utilities with any required easements made necessary by the proposed vacation.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall submit plans for review and approval by City Public Works/Storm Water. These plans must be approved prior to the vacation case proceeding to the WCC.
2. If required by City Public Works/Storm Water, provide Planning Staff with a dedication of a drainage easement by separate instrument, which has been approved by City Public Works/Storm Water, to be recorded with the Register of Deeds. This dedication(s) must be provided prior to the vacation case proceeding to the WCC.
3. Provide franchised utilities with any required easements made necessary by the proposed vacation.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

7-10. VAC2004-27 – Request to Vacate a Pedestrian Access and Utility Easement.

APPLICANTS/OWNER: Legacy Banks c/o Brad Yeager

AGENT: Baughman Co, PA c/o Phil Myer

LEGAL DESCRIPTION: A 10-foot wide portion of the pedestrian access portion of the platted 20-foot drainage, utility and pedestrian access easement, that abuts the west side of Lot 10, Block B, the Willowbend North Estates 2nd Addition, as recorded with Wichita, Sedgwick County, Kansas

LOCATION: Generally located south of 45th Street North and west of Rock Road, at the end of Burton Creek Circle

REASON FOR REQUEST: Remove the half of the pedestrian access use from a multipurpose easement an abutting single-family residential lot

CURRENT ZONING: Site and surrounding properties are zoned "SF-5" Single-family residential

The applicant is requesting consideration to vacate a 10-foot wide portion of 20-feet of pedestrian access, that abuts the west side of Lot 10, Block B, the Willowbend North Estates 2nd Addition. The applicant wishes to remove abutting pedestrian access from this lot. The 20-feet of pedestrian access is part of a platted 20-foot drainage, utility and pedestrian access easement. There is sewer in the easement. The pedestrian access links Blocks A & B, to Reserve "A", all in the Willowbend North Estates 2nd Addition. Per the plat text 'Reserve "A" is reserved for open space, lakes, landscapes, berms, sidewalks, drainage purposes and utilities...' 'Reserve "A" "shall be owned and maintained by the homeowners association for the addition.' Reserve "A" abuts a railroad ROW on its south side and a golf course on its east side. The railroad ROW is part of a proposed bike path; rails to trails. The railroad ROW is currently an active line, used in part to connecting activity between Wichita and El Dorado in Butler County. The proposed vacation would leave 10-feet of pedestrian access (abutting Lot 9, Block B, the Willowbend North Estates 2nd Addition) onto Reserve "A". The Willowbend North Estates 2nd Addition was recorded with the Register of Deeds January 8, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the 10-foot pedestrian access portion of a platted 20-foot drainage, utility and pedestrian access easement, that abuts the west side of Lot 10, Block B, the Willowbend North Estates 2nd Addition, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 20, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described pedestrian access portions of the platted street ROW and the platted setbacks and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted street ROW and the platted setbacks described in the petition should be approved with conditions;
- (1) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (2) All improvements shall be according to City Standards.
 - (3) Vacate only the 10-foot pedestrian access use portion of a platted 20-foot drainage, utility and pedestrian access easement, that abuts the west side of Lot 10, Block B, the Willowbend North Estates 2nd Addition.
 - (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate only the 10-foot pedestrian access portion of a platted 20-foot drainage, utility and pedestrian access easement, that abuts the west side of Lot 10, Block B, the Willowbend North Estates 2nd Addition.
4. All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

DUNLAP moved, **WARNER** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — ZONING ITEMS**

8. **Case No.: ZON2004-27** - Transtecs Corporation Request Zone change from "LC" Limited Commercial to "GC" General Commercial on property described as;

Lots 21, 22, 23 and 24, Block 6, Wilber's Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located Northeast of Piatt and 21st Street (2101 E. 21st Street).

BACKGROUND: The application area is located at the northeast corner of 21st Street and Piatt, and is currently zoned "LC" Limited Commercial. The site is developed with a commercial building that contains manufacturing equipment, a C N C milling machine, which was previously used in association with a vocational school. Use of that manufacturing equipment in the teaching environment was a legal activity in the "LC" district, per the Unified Zoning Code. The facility has converted from a teaching facility to a manufacturing establishment that is now making parts for government contracts. With that conversion from a teaching facility to a manufacturing entity, the land use is now classified as "manufacturing, general" which requires "GC" General Commercial zoning, instead of "LC" zoning.

Surrounding property is zoned a variety of districts: "MF-29" Multi-family Residential, "GO" General Office, "GC" General Commercial, and "LC" Limited Commercial. Surrounding uses include: two duplexes, manufacturing/training facility, vacant commercial and office buildings.

CASE HISTORY: The application area is platted as part of the Wilber's Addition, Lots 21-22 and the north 40 feet of Lot 23.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29" Multi-family Residential; residential
SOUTH: "GO" General Office & "LC" Limited Commercial; office/commercial
EAST: "GC" General Commercial; commercial/manufacturing
WEST: "LC" Limited Commercial; commercial

PUBLIC SERVICES: All public services are available to the site. 21st Street is a paved five lane arterial with approximately 16,500 average daily trips. Piatt is a local residential street.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" depicts this site as appropriate for "commercial" uses. This segment of 21st Street, from I-135 and Hillside, has long been used for commercial or office uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is zoned a variety of districts: "MF-29" Multi-family Residential, "GO" General Office, "GC" General Commercial, and "LC" Limited Commercial. This segment of 21st Street, from I-135 and Hillside, has long been used for commercial or office uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial. The "LC" district permits a wide range of retail and office uses that would be appropriate at this location.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The land located immediately to the east is already zoned "GC" General Commercial. Approval of this request will not introduce zoning or potential uses into the area that do not already exist. The machine triggering the need for the rezoning is located inside a building, minimizing any potentially detrimental affects.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would cause the applicant economic loss in that he has contracts to fulfill that require the use of this machine. Approval of the request will allow this business to grow and compete more successfully in the future without introducing a new zoning district into the area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" depicts this site as appropriate for "commercial" uses.
6. Impact of the proposed development on community facilities: No negative impacts on community facilities have been identified.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

9. **Case No.: CON2004-18** – Family Centered Services, Inc. c/o Douglas L. Watson (owner/applicant) Request Sedgwick County Conditional Use to permit a cemetery on property zoned "SF-20" Single-family Residential on property described as;

The West 61.55 feet of Webb-31 Addition, Sedgwick County, Kansas TOGETHER WITH the South 145.08 feet of Webb-31 Addition, Sedgwick County, Kansas. Generally located at the southwest corner of 31st Street South and Webb Road.

BACKGROUND: The applicant proposes to develop a cemetery at the southwest corner of 31st Street South and Webb Road (see attached site plan). The applicant owns a total 9.24 acres, of which 6.56 acres are zoned "LC" Limited Commercial and 2.78 acres are zoned "SF-20" Single Family Residential. A portion the applicant's property that is zoned "LC" is developed with a funeral home. The remainder of the applicant's property that is zoned "LC" is proposed to be used as a cemetery, a use that is permitted by right in the "LC" district. Cemeteries may be permitted with a Conditional Use in the "SF-20" district; therefore, the applicant has requested a Conditional Use for a cemetery on the portion of the applicant's property that is zoned "SF-20".

The surrounding properties are primarily developed with suburban residential and agricultural uses. Much of the surrounding property is zoned "SF-20" Single Family Residential. All corners of the 31st Street South and Webb Road intersection are zoned "LC" Limited Commercial, as is typical for arterial intersections in the community, and are undeveloped except for the applicant's funeral home.

CASE HISTORY: The applicant's property is platted as the Webb-31 Addition, which was recorded on July 15, 1999. In 2000, the applicant submitted a Conditional Use request (CON2000-00008) for a cemetery. The Conditional Use was approved by the MAPC but was appealed to the County Commission due to protest petitions representing 43% of the land area within the notification area. The applicant withdrew the request prior to the County Commission making a final decision on the request.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" & "LC" Agriculture
SOUTH: "SF-20" Agriculture, Single Family
EAST: "SF-20" & "LC" Agriculture, Single Family
WEST: "SF-20" Agriculture, Church

PUBLIC SERVICES: The site has frontage to 31st Street South and Webb Road, both two-lane paved arterial streets. 31st Street South has traffic volumes of approximately 2,000 vehicles per day. The 2030 Transportation Plan estimates the volume for 31st Street South will increase to approximately 5,400 vehicles per day and recommends that 31st Street South remain a two lane arterial. Webb Road has traffic volumes of approximately 3,900 vehicles per day. The 2030 Transportation Plan estimates the volume for Webb Road will increase to approximately 5,300 vehicles per day and recommends that Webb Road be widened to a four-lane arterial. Municipal water and sewer services are not required for the proposed cemetery.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Commercial" development. The proposed cemetery is consistent with the "Commercial" designation.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. Development and use of the subject property shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding properties are primarily developed with suburban residential and agricultural uses. Much of the surrounding property is zoned "SF-20" Single Family Residential. All corners of the 31st Street South and Webb Road intersection are zoned "LC" Limited Commercial, as is typical for arterial intersections in the community, and are undeveloped except for the applicant's funeral home. The proposed cemetery is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential. With a Conditional Use, a cemetery is permitted in the "SF-20" district. The "L-shaped" configuration of the portion of the applicant's property that is zoned "SF-20" is such that the most suitable development of this portion of the property is in conjunction with the remainder of the applicant's "LC"-zoned property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed cemetery on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Commercial" development. The proposed cemetery is consistent with the "Commercial" designation.
5. Impact of the proposed development on community facilities: The proposed cemetery will have significantly less impact on community facilities than other uses permitted by right on the applicant's property.

SCOTT KNEBEL, Planning Staff presented the staff report.

DOUG WATSON Family Centered Services, 3201 S. Webb Road, Wichita, KS 67210, applicant. Four years ago we built the funeral home there. We had about 10 acres there, and we have taken about 2 acres of that to establish a funeral home and crematory. Since we have been open, we've had a lot of interest in people that would like to have a cemetery established in that area. There are not other cemeteries in the southeast area of Wichita that are currently available. They are all filled to capacity. We have come up with a very nice plan to put in a cemetery that will have a beautiful look to it with a lot of landscaping, and I think it will be a great asset to that particular corner of the property.

BARFIELD I notice that this was approved in 2000; however, you withdrew your request before it went to the County Commission. Was that due to the 43% of the landowners disagreeing with this request?

WATSON No, when we originally did this the title company had an error and put a wrong address down and that person was not notified. So at that time, they told me I had to start all over again and go through the process. At that time, I wasn't willing to go through that again, but now we have everything in order, and we're ready to move forward.

BARFIELD Are there still 43% of the landowners against this?

WATSON I guess we will find out.

DUNLAP You said all of the cemeteries in the area are filled, what about the one at 47th & Greenwich?

WATSON The Branson Cemetery; you can only be buried there at this point if you currently own property, and it is a very small cemetery, maybe 1/2 acre. The Seltzer Cemetery at 143rd and Harry is completely filled unless you already own property. Those

are the two that I was referring to. Unless you go into Derby at El Paso, which is almost filled, and they are getting ready to build a cemetery at 95th Street South and Webb Road.

DONNA CASTANEDA, 1823 S. Red Oaks, joint property owner of 3333 S. Webb Road, Wichita, KS 67210 I have e-mailed my concerns, and I have my own hand drawn map. This is the first time he put money in the undeveloped acreage. He has put a well in, and put grass in there. There are not enough parking spaces. I have seen flowers in the field. I can hear the crematory working. I have wondered if those that had been cremated, if their family members wishing to put them in a country setting had not already placed ashes there. How will this effect groundwater, because most people have well water. All the land that is adjacent to my property at 3333 S. Webb Road is farmland, except for Mr. Watson's that is commercial, then single-family, then commercial -- a church, then single-family home. It was divided up strange 10 years ago. How many times is this allowed to have this zoning change or conditional use to be requested?

JIM HARDEN, 3300 S. Webb Rd., Wichita, KS 67210 I live directly across the street from the proposed cemetery. I have talked to Mr. Watson before, and he seems like a pretty nice guy. I am not sure why we can't come to some sort of agreement with this thing. He does not live on the property. He does not live in the area. We do. I feel the proposed cemetery does not fit within a residential area, and it would be detrimental. Proposed buyers would not want to be next to or live close to a cemetery, as we do not. Not many restaurants, day cares, grocery stores for example would want to be next to a cemetery either. We had not planned on or had in mind a cemetery as a view looking out of our front door. We knew the corner was zoned "LC" Limited Commercial, and thought some day a restaurant, gas station, or Wal Mart or Quik Trip would go in there. Traffic will be a problem. It already is a problem on Webb Road because of all the people moving to the suburban area. My next door neighbor does not have rural water. It costs about \$2,900 just to get the line across the street, so he still has well water. The way the water runs from the west to the east, from the cemetery to our properties.

STEPHEN A. FLEMONS, 2327 Brandon Circle, Wichita KS 67226/grandmother address Clarissa L. Flemons, 1322 N. Minnesota, Wichita, KS 67214 My grandmother purchased this property several years ago. She is in the audience today, but because of a stroke, she will not be standing up here today. My name is also on the property. I think a cemetery would bring down the property values in the surrounding area. We own the 10 acres directly west of the funeral home. I don't think this is a good idea, and it might not bring other business out here.

DUNLAP Do you have a plan for your 10 acres? Are you living on it now?

FLEMONS No, last year I had the land disked by a local farmer, and we were going to put hay on the property and sell the hay. I don't live there, and there is not a house there. It is just a 10-acre plot right now.

BARFIELD I think the last time this came up your Aunt spoke and said that your grandmother had plans to build on that property.

FLEMONS We are still thinking these over and may develop, but I don't want to live across from a cemetery.

ROBERT LUPTON, 3835 S. Webb, Wichita, KS 67210 I have 15 acres there. Part is residential, and the other part is agriculture. My concern is the groundwater. They got away with putting a septic system in there, and I wasn't able to. I don't understand that. I had to get a lagoon.

DOUGLAS WATSON First of all, I don't live there, but I do have three-quarter million-dollar investments there, and I spend a lot of time out there, and my vehicle is there almost every night. The septic system was approved because the ground passed the percolation test, but it is only for the restrooms. The embalming room is pumped into a tank, and then it is pretreated and taken to a sanitation facility. The Flemons to the west, I know that you disked it once for hay, but as of this year you haven't done anything to your property. I want to provide something that will increase the value. If you look at housing development such as White Tail, which is right across from Lake View Cemetery, Kensington Gardens is right at 21st and Greenwich, Rest Haven, etc. I want to be a good neighbor, but I also want to provide something that will increase the value of that corner. It is already zoned "LC" Limited Commercial except for this little bit, and I would like to get that cleaned up so we can move ahead.

SHERMAN There seems to be concern about the view and the landscaping. Can you address that more specifically?

WATSON As you can see, the funeral home is on the northeast corner, and all along Webb Road we are thinking about instead of doing the small waterfall and pond, actually putting a pond across the front with fountains. We also have a lot of trees that we will put along 31st Street.

SHERMAN In looking at your landscaping plan, all three of the persons who were concerned about the landscaping, what will they first see when they look out? Are they going to see the trees or are they going to see burial plots and headstones when you get done landscaping?

WATSON You will see the trees.

SHERMAN Are they going to be a low hedge or a high hedge?

WATSON Obviously we are not going to put a wall of trees so that you can't see anything. You are going to be able to see through the trees, and yes you will see headstones. It is a cemetery. We will have a gazebo, a lake, a circular park like situation, and a waterfall. Our business is growing, and I have a major investment in it, and I will be proud to put my name on this.

WARNER Are you going to do this landscape in stages, or what is your time schedule?

WATSON The first stage will be the perimeter, because that is what will be what catches peoples eye the most as they drive by.

BARFIELD The statement that is attributed to you that as you put in burial plots the land that Mrs. Flemons owns will be worth little or nothing, would that be an admission then that your development would have a detrimental effect on neighboring properties?

WATSON I don't think so. Again, I reference Whitetail, which is an upscale community directly across from Lake View, and Lake View is a wide-open cemetery. Some of those homes are approaching \$500,000 to \$1,000,000. The problem with the property to the south of me that is owned by Linda and the Flemons is there is a floodway through there, so this floodway will be a problem with building. So if a floodway that cuts through your property, you are limited to what you can build because you can't build in a floodway.

MITCHELL What is the width of the west strip that you are asking for the change in zoning on?

KNEBEL The west strip is about 62 feet. The south strip is about 145 feet.

MITCHELL How much of west strip would be occupied by your landscaping plan?

WATSON At least 20-30 feet away from the property line, because of the trees and the shrubs that we are going to put there. You can't butt up right next to the property line, so we will come back from that.

GAROFALO Would you show on the map the application area for the Conditional Use?

WATSON Points to the map showing a narrow strip around the west and south edge of the overall property.

GAROFALO Whether your Conditional Use is approved or not, do you plan on going ahead with the cemetery on the property already zoned "LC"?

WATSON Yes.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WARNER moved, **MITCHELL** seconded the motion, and it carried (11-0).

10a. Case No.: CUP2004-17 DP276 (Associated with ZON2004-30) – Young Men's Christian Association of Wichita, c/o Dennis Schoenebeck (owner); MKEC Engineering Consultants Inc, c/o Greg Allison (agent) Request Creation of The Northwest YMCA Community Unit Plan;

and

10b. Case No.: ZON2004-30 (Associated with CUP2004-17 DP276) - Young Men's Christian Association of Wichita, c/o Dennis Schoenebeck (owner); MKEC Engineering Consultants Inc, c/o Greg Allison (agent) Request Sedgwick County Zone Change from "SF-20" Single-family Residential to "LC" Limited on property described as;

A tract of land in the South Half of the Southeast Quarter of Section 2, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Southeast Quarter; thence S 88 degrees 37'28" W on a Kansas South Zone Grid Bearing along the South line of said Southeast Quarter, 1610.93 feet; thence N 00 degrees 43'52" W, parallel with the East line of said section, 609.35 feet; thence S 88 degrees 37'28" W, parallel with the South line of said section, 308.47 feet; thence N 00 degrees 43'52" W, parallel with the East line of said section, 704.11 feet; thence N 88 degrees 33'52" E, along the North line of the South Half of said Southeast Quarter, 1919.42 feet to the sixteenth corner on the East line of said Southeast Quarter; thence S 00 degrees 43'52" E, along the East line of said Southeast Quarter, 1315.46 feet to the point of beginning. Generally located at the northwest corner of 21st Street North and 135th Street West.

BACKGROUND: The applicant is requesting to create a 49-acre C.U.P with seven parcels located at the northwest corner of 21st Street North and 135th Street West. Parcel 1 (40 acres) is proposed for "LC" Limited Commercial for indoor and outdoor recreational use (excluding golf driving range, pitch and putt, outdoor theater and amusement rides), personal improvement service such as instructional services and hobby classes and day care.

Parcel 4 (1.56 acres), 5 (1.99 acres) and 6 (1.39 acres) also are proposed for "LC" and would permit indoor and outdoor recreation activities like those permitted in Parcel 1. Parcel 4 abuts 21st Street North but is adjacent to Parcel 1 intended to be the main YMCA site. Parcels 5 and 6 also are adjacent to Parcel 1. Recreational uses are requested for these parcels as potential expansion of the YMCA facility or for similar compatible uses. The remaining three parcels are Parcel 2 (1.50 acres), 3 (1.47 acres) and 7 (1.26 acres). Recreational uses are not requested for these parcels.

Parcels 2-7 would prohibit all residential uses except assisted living. Other prohibited uses would be: adult entertainment; asphalt and concrete plant, correctional placement residence; group home; private club; recreational vehicle campground; tavern and drinking establishment; vehicle and equipment sales, outdoor; vehicle repair, limited; vehicle storage yard. Drive-through windows would be prohibited within 150 feet of residential zoning districts and facing the arterial streets.

The C.U.P. provides landscaping requirements for a landscaped street yard, parking lot landscaping and buffering. It requires screening and setbacks per the Unified Zoning Code requirements. Cross-lot and pedestrian circulation is required.

Maximum building coverage is requested as 30 percent; maximum gross floor area as 35 percent. The presence of a large drainage requirement and anticipated use of the majority of the property for outdoor recreation spaces makes it unlikely to achieve

this level of development. Maximum building height is requested as 80 feet for Parcels 1 and 5, with Parcel 1 being allowed to be more if setbacks exceed minimum requirements. Building heights for other parcels would be 35 feet.

Parcels 2 through 7 would have architectural compatibility. Parcels 2 and 7 located across from the residential areas to the east would have additional requirements to avoid visibility of rear service areas, parking lots, drive-through windows, and overhead doors from the residences.

Freestanding signs would be limited to 20 feet in height on 21st Street North and 12 feet in height on 135th Street West and 100 square feet in size, spaced a minimum of 150 feet apart. Billboards and portable signs would be prohibited. Lighting for outdoor activities would have to be turned off by 10:00 p.m. Window signage would be limited to 25 percent.

The site is currently in agricultural use and is traversed by Dry Creek. A major part of the property is in the floodway and/or floodplain. Many of the sports fields would be located in the floodplain and a large drainage detention facility/pond is proposed for the northeast part of the C.U.P.

The property to the north and west is in suburban estates or agricultural use. Forest View Addition is located to the east of 135th Street West. The residential lots in this subdivision are about two-third to three-fourth of an acre in size. The property south of 21st Street North is in similar sized residential lots. Also, a church is located south of the main parcel and the property to the west of the existing church is held as another church site. All of these properties are zoned "SF-20". The property to the southeast of the intersection is zoned "LC" and "SF-5" and is developed by the city of Wichita for utility purposes.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20"	Agriculture, suburban residential
SOUTH: "SF-20"; "LC"; "SF-5"	Church, suburban residential, utility
EAST: "SF-20"	Single-family residential
WEST: "SF-20"	Agriculture, suburban residential

PUBLIC SERVICES: Currently, 21st Street North is improved as a two-lane arterial street. The C.U.P. proposes four openings on 21st Street North (three full movement and one right-in/right-out), and two openings on 135th Street West (one full movement and one right-in/right-out).

Other normal public services are not yet extended to the site. The C.U.P. states that occupancy permits shall not be issued until municipal water sewer services are available.

CONFORMANCE TO PLANS/POLICIES:

The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential".

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development, but expands the limits of commercial use beyond that shown on the Land Use Guide.

RECOMMENDATION: The proposed C.U.P. represents a big step forward in pushing commercial development to the edge of the existing urbanized area. Major drainage issues related to Dry Creek encumber the property.

In terms of C.U.P. development provisions, this C.U.P. is unusual in orienting the development pattern around a proposed major recreation facility with indoor and outdoor uses. The C.U.P. softens the impact of the C.U.P. on the eastern edge through building design, buffering and use restrictions.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2004-00030), subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-276), subject to the following conditions:
 - 1. General Provision #3: Clarify that the uses permitted by the C.U.P. are only those uses permitted by right and not by Conditional Use unless specifically identified.
 - 2. Add General Provision #3.e. Prohibit convenience store and service station except on Parcels 3 and 4.
 - 3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 - 4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.

5. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
6. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-2746) includes special conditions for development on this property.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north and west is in suburban estates or agricultural use. Forest View Addition is located to the east of 135th Street West. The residential lots in this subdivision are about two-third to three-fourth of an acre in size. The property south of 21st Street North is in similar sized residential lots. Also, a church is located south of the main parcel and the property to the west of the existing church is held as another church site. All of these properties are zoned "SF-20". The property to the southeast of the intersection is zoned "LC" and "SF-5" and is developed by the city of Wichita for utility purposes.
2. The suitability of the subject property for the uses to which it has been restricted: "SF-20" Single-family Residential remains a realistic use for part of the property. The northern half of the site that is in the floodway is not suitable for any development and the portion in the floodplain is not suitable for residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development will change the complexion of use along the western edge of Wichita. This could become a major activity node. The presence of commercial use across 135th Street West could affect the residential development in Forest View Addition, but many of the C.U.P. provisions (buffer, lowered sign heights, some restrictions on building orientation and materials, use restrictions) are designed to mitigate the impact. Drainage issues have already received scrutiny and will continue to need intense scrutiny in the platting phase to prevent flooding impacts both downstream and upstream.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential". **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development, although it conflicts with the Comprehensive Plan designation for "low density residential" use.
5. Impact of the proposed development on community facilities: Traffic increases from the development should be addressed by accel/decel, possible left-turn lane and possible signalization, but the dramatic change in traffic will still be highly visible. The development will increase pressure to make permanent improvements to 21st Street North in particular.

MILLER The folks that are here that are not part of the application have asked if the applicant would agree to a deferral.

KEN KALLENBACH, MKEC, 411 N. Webb Rd., Wichita, KS 67206 We want to go ahead and proceed.

DONNA GOLTRY Planning staff I want to call attention to the fact that you have a handout. It is some proposed changes to General Provision #9E & #9J and both of these changes are in regard to signage. Also, there is an error in the staff report in terms of public services. There is only one opening shown on 135th Street West and that would be the opening that would be located between Parcel 2 and Parcel 7.

Based on the research that we have done on the case, the issues that have come to the forefront, there is a significant amount of drainage issues that will need to be addressed during platting. It is somewhat unusual in that, at this point, even though we are not at the platting process there have been a lot of lengthy discussions on drainage issues. Mr. Jim Weber with County Public Works is here today to address to questions.

I have received feedback--pros and cons--on the case that I think relate more to the commercial corner, and there is one staff recommendation that we are requesting: that convenience stores and service stations be prohibited on Parcel 3 & Parcel 4 which are the Parcels along 21st Street. That is the one additional requirement we are asking beyond what is shown on the Community Unit Plan.

In addition, the applicant has also met with Public Works, both County and City personnel, to talk about transportation improvements, and in lieu of doing a full-scale traffic impact study, has agreed to a set of permanent and interim improvements. Those are listed as General Provision No. 20 on the C.U.P., and gets into center left turn lanes and right turn accel/decel lanes.

DUNLAP Thinking about the general character of the area, what is that crosshatch area?

GOLTRY That is the proposed alignment of K-96, which is a little bit to the west of this (pointing to the site). What is the long-term future of 21st Street North? In my mind it is going to be more commercial than it is today, but not as commercial as areas of 21st in the Maize Road area.

DUNLAP If I remember correctly on our proposed NW Bypass, K-96 route, we do have an interchange at 21st Street?

GOLTRY I'm certain to say that the NW Bypass does color the fact that we are recommending in general for approval of this C.U.P., knowing that 21st will be a more intense commercial corridor.

DUNLAP Do you know if we have it in the CIP for the widening on 21st Street yet?

GOLTRY I don't know the year for that.

BARFIELD What's the reason for your request not to allow convenience stores?

GOLTRY Just trying to reduce the intensity of the commercial use directly across the street for the two church parcels there.

KEN KALLENBACH, MKEC, 411 N. Webb Rd., I am the Planner on this project, and Greg Allison is the Engineer on this project. Also Brad Biddle is the Architect with Shaffer, Johnson, Cox and Fry, and Ken Shannon with YMCA Board and Dick Devore, we are all present today. There are 50 acres here, and the YMCA is going take maybe 20 acres with the building and the parking, and another 10 acres or so for a pond. While the commercial has got a lot of interest from the neighbors that are here today, it is less than 10 acres on this corner.

The NW Bypass is to interchange, according to KDOT, on 21st Street, just to the west of our site, a little more than a mile. That puts this section of land, I think, as an intensive type of use area potentially. The YMCA does not have plans to develop the commercial at this time. It is a recognition of things down the road, and their duty as not-for-profit is to maximize values.

Also, previous Land Use Guides by the Planning Commission have identified this corner, both in 2000 and in 1999, as being appropriate for future commercial development. It seems with the NW Bypass, it is going, rather than less intensive, to more intensive.

The parcels that Donna was talking about, and I think what she meant were the parcels along 135th Street West, might not be appropriate for convenient stores.

GOLTRY That is correct. I thought the other small parcels (referring to Parcels 2 and 5-7) were already excluded, so I was adding Parcel 3 and Parcel 4. But the staff report was only asking for excluding the convenience stores on the parcels except 3 & 4.

KALLENBACH I think everyone recognizes the potential for commercial along 21st and probably less desirable for along 135th. We feel those are appropriate also because we have in our development plan a berm along 135th Street that will have landscaping on it. We will provide architectural design, which is like the front of the building. We will have ground signs and make those properties amenable to adjacent residences.

A big part of time in meeting with neighbors, and we have had three meetings in general with neighbors, and that is part of the reason that I didn't want to defer today. I think we have exchanged a lot of information that has to do with drainage. Our proposal on this property is to have no reduction in floodplain storage on it even though we are in a floodplain, and we are going to use it for various buildings, and those pads will be brought up to above the 100-year floodplain. We will take the dirt out of the floodplain area, and put some back in the floodplain area in different places, but we will not reduce the amount of water that we can store on the property. We also propose to create a berm along the east side of the property to keep those residences to the east of 135th from flooding. That is to our advantage and to theirs. We have our pads up out of the floodplain, and on to the north we don't need to do that, but that is part of what the YMCA would like to do to assist the neighbors with their flooding problem. The 100-year surface elevation does not increase with our development; it stays the same.

DICK DEVORE, 3330 N. Woodlawn, Wichita, KS 67220 Member of the Board YMCA Wichita has the most vibrant YMCA program in any city in the country. We have over 20% population, approaching 25% of the population that is a member of the YCMA. We have a staff currently in excess of over 900 people. They are motivated and they are challenged, and they are offered jobs in organization like the YMCA all over the country everyday. This new YMCA will provide about 180 new jobs for this community and it will provide opportunities for advancement, challenging positions, increased salaries for many of our current employees. Any delay in approving this project could be very detrimental to the operation of the YMCA and to our staff. I would encourage you to proceed with it at the most rapid rate you can.

KENNETH HIEBSCH, 9300 BIRCHLANE, Wichita, KS 67212 I am a trustee of the Wichita United Methodist Urban Ministry and we are the corporate body that own the 22 acres just to the west of the Believers Baptist Church and on the south side of 21st Street. When we bought this land some three years ago, we had no knowledge that the YMCA was going to go in there, and when we read that, we were thrilled. Because we think that is a compatible neighbor and one that we want in there. I am speaking in support of this development.

CLARK "CR" NELSON, NELSON & GUNDERSON, ATTORNEY, 2420 N, WOODLAWN, BLDG. 100, SUITE K, WICHITA KS 67220 I am representing Alan and Alberta Whetzel who own the property just to the north of the subject property. They own approximately 200 acres to the north of the property in question. We weren't asking the applicant for a deferral but to ask this body to vote for a deferral, and let me tell you why. We are not opposed to the YMCA. It is a great organization. Unfortunately they have picked the one piece of property in Sedgwick County that is the most fragile with respect to flood issues. It sits right smack in between the Cowskin and Dry Creek. You all have seen the photographs of all the flooding that has taken place. Part of this property is in the floodway and almost the balance of it is in the floodplain, and you are being asked today to ignore that.

They are glossing over the issue of flooding on the basis that it is a platting issue. And I think they have recognized today that it is an important issue that has to be addressed today. We have met with the YMCA representatives and MKEC. The day that we were employed to get into this matter, which was May 24, after their notice which was on May 20, we asked MKEC for a copy of their report so that we could provide the same to our engineering experts and, hopefully, they would come to the same conclusion as

MKEC for most of this. Then is how our objections are going to be resolved. We were promised to have their report the next day, and we didn't get it. We didn't get the report for 10 days. And we got it June 2, and today is June 10. We sent it Fed Ex to our experts who are Oklahoma State University professors in this area. And we have produced a letter from one of them today, but in essence, they are stating that they have not the time to digest all of the issues. The report is about a foot thick.

We need some additional time to allow our expert look at this report, meet with MKEC and see if we agree on the consequences to the adjoining property. I think it is unfair and unreasonable to be denied that. MKEC has done the best that can; they are a good firm. The YMCA is not scheduled to open until January 2006. There is a lot of dirt moving; we are talking 18 months. We are asking for this matter to be deferred to June 24th.

Absent having our experts the time to get into these issues, this does not constitute a fair and full hearing. I think the staff has told you that this does not comply with the Comprehensive Plan. They want you to ignore that one also. In the staff report they have plucked out certain convenient terms and goals and so forth and they have ignored many others that directly oppose this application. One of those being the effectiveness of handling storm water and so forth, stating they will worry about that at the platting stage. That is the necessary element for you to consider today on the zone change request, and I ask you to do that.

The public service issues, they acknowledge that 21st Street will not handle the project. They acknowledge that 135th is not designed for this project. There are a number of neighbors to talk about this that back in and out of 135th, and I don't know how they are going operate if there is an access point off 135th.

The Comprehensive Plan also talks about commercial centers and neighborhood centers being 4-15 acres. This is a 50-acre project. We are in favor of working out the YMCA; the light commercial needs to go. The YMCA is a wonderful project if we don't get flooded any worse than we are now.

ALAN G. WHETZEL, 2401 N. 135TH W., Wichita, KS 67223 Lucky W. Ranch, owner The staff report identifies this property as only agriculture and suburban estates. In no way is that a true description of the Lucky W. I am neither a farmer nor a country gentlemen. The south property line of the Lucky W is the property line of the proposed CUP. It is approximately 1/2 mile in length. Dry Creek transects the YMCA property for the majority of the boundary until the creek turns north into the Lucky W. The staff report states the CUP property has a drainage problem. It does. It also has a major flooding problem. Look at the floodplain and the floodway, the floodway in the purple and the floodplain being in the green. But, also notice how much ground on the Lucky W is not in the floodplain or floodway, especially the frontage on 135th Street and on 29th Street North.

I expressed my concerns about the CUP proposal in several meetings with the YMCA, their engineers, their board members, their architects, their flood control personal, starting with the first meeting in Jan. 26, 2004. Each subsequent meeting brought more information, until on May 13th it became clear that the CUP was really about a commercial development requiring additional dirt, dams, dikes, and filling in the floodplain with parking lots, streets, roofs, etc.

Today I am here to talk to you about the Lucky W., its past, present, and future. My personal dream was always to own a place where I could own horses. In 1968, I purchased a home and 3 acres on Dry Creek. I lived there for 12 years and experienced the flooding of Dry Creek in the Cowskin basin. It never flooded my home because the house was built out of the floodplain.

In 1980, I purchased the 80 acres that adjoin the proposed CUP. It was an old farmstead that has been a rental property for 31 years. I cleared it, cleaned it, planted, and built fences and became the "Keeper of the Dry Creek." In 1986, I purchased 40 acres adjoining my 80, extending my frontage to a 1/2-mile on 135th Street. These two pieces of land have many acres out of the floodplain. In 2001, I purchased the next 80 to the north with future development in mind.

As a responsible owner of the land that adjoins a floodplain and the floodway, it has been my desire to give all of Sedgwick County and the City of Wichita, the opportunity to address the flooding problems on the Cowskin Creek Basin. To date there is no plan for flooding in the Cowskin Creek Basin, which includes some 20,000 acres according to statistics from the Planning Department. The recent environmental report from the U.S. Corp of Engineers shows exactly what happens when floodplain ground is developed.

It has become too expensive to fix the flood issue south of 21st on the Cowskin Creek Basin. The U.S. Corp. of Engineers they have done (looked at) eight projects and seven of the projects have been rejected because, in business, we call it return on investment. The only one that they are interested in is between Maple and Kellogg, and that will not fix any flooding downstream, and that will not fix any flooding upstream. Item #4 in the report is a detention lake on Dry Creek, and it would not give a return on investment. Floodplains must be able to accept water or find new places to deposit floodwater. Filling in the floodplain of this proposed project is irresponsible. The potential liability is huge and will go on forever.

GAROFALO Your main concern is about drainage?

WHETZEL I met with the YMCA, which was January 26th, in my home. He came to the meeting and he was unprepared about the flooding issue. He indicated that he would get back to us, and he did. He said they hired a civil engineering company. We set up another meeting with about 14 households in the neighborhood and we used my home for the meeting, and at the meeting he brought Mr. Jim Weber. He also brought his architect, his engineering firm, and the president of the Northwest YMCA, and we had the same discussion we are having today. The next meeting was May 13th in a local church to discuss with the residents who live within 1,000 feet of the property as to what they might do. The issue at stake was that we were told in the first three meetings that there would be no dirt brought into the location, and on May 13th, from Jim Weber, he guaranteed that 135th Street would remain dry. On June 1st with a meeting with the YMCA and legal counsel, the MKEC engineer stood up and said that 135th Street would be a dry road with some water.

WESLEY A. KOTTA, 2226 N. 135TH W., Wichita, KS 67223 The majority of the community is in favor of the YMCA. This is appearing to be a problem and I am just a little homeowner and my major concern I have out there is the water. I have a picture where water is at the intersection, and it is 21st Street at 135th, and it is within 12 inches of going south over 21st Street.

At the first meeting with the YMCA, no comment was made about commercial development at 21st Street and that can become a problem. I have had personal conversations with Commissioner Winters, and David Spears, and after further study, there is a solution, but it is not cost effective until there is water in someone's basement. When the YMCA met with us at the church, the essence was that we wanted something that if it does go commercial, we would prefer that it not, we would prefer something Monday-Friday, 8-5, but we don't want restaurants, bars, taverns and things like that.

At one of the meetings, MAPC Commissioner Mitchell came out and we asked him if the water issue was your responsibility, and you had the blank check, what would you do? He indicated that around 151st Street and 13th Street, a huge water retention pond ought to be built, but it would have to be big. The YMCA is saying put in bigger culverts, and I already have two 24-inch culverts already. The commercial element is not good--the lights, traffic, noise-- we enjoy the peace and quiet. I think the YMCA could be a good neighbor, but the commercial development at \$9 a square foot, I think I know what the whole purchase of the 50 acres was all about. It amazes me that it is too expensive to fix.

JACK VAN SKIVER, 2256 N. 135th W., Wichita, KS 67223 I live directly to the north of the proposed exit onto 135th Street. I would like to thank the YMCA Board for coming today and I hope being supporting, they have opened their eyes.

I don't think the flooding issue has been addressed enough. The unfortunate thing about the Dry Creek is that you have to live along it to understand it. When we first heard the YMCA was coming out there, we had hope. But when they proposed this commercial site, that devastated my hopes and thoughts that our flooding can be eliminated because they are putting this raised ground in an area that is directly in the floodplain. And if you look at the floodplain, it shows the flooding that happened in January, and this is the new 100-year plan except the plan that shows in front of my house, Parcel 5, was a little closer to my house than what those lines show. During the floods the water will go up about 2 1/2 feet, about the top grade of the road, which would be right at the grade level of my house.

More or less, Parcel 2 and Parcel 7, I live across the street, which they want to put the commercial development in. I don't want a fast food place there, and the intercom and noise and traffic. I don't want that. I am opposed to anything being opened beyond 5 p.m. in the evening on Parcel 2 and Parcel 7.

MIKE BELL, 2326 135th, Wichita, KS 67223 We do have a flooding problem. The way I understand it is when MKEC and YMCA started talking about the retention pond, it was taking dirt out of the property that was there. And the longer this goes, we understand they will take the dirt out of the property for the retention pond plus bring dirt in. I don't understand how bringing dirt in is going to help the flooding problem. May 13th we had a meeting and we had 3 1/2 inch rain, and 135th Street is flooded. I don't know if you have seen pictures of the field but the water gets 30 inches or better over the road. I don't understand how building a retention pond is going to retain that kind of water that comes through there.

We don't want this to be a problem in the future. Their last proposal was to take their water over on the east side, which is in front of our houses, and take the water north toward Mike Hill. Mike Hill had to go to an appointment but he was here from 12:30 to now. He has a 20-acre pond in there. I have a 30-inch culvert. Others have 24-30's; we all have large culverts. They are proposing putting in two 24 X 36 culverts and pushing that water north. If anyone knows water, around here most water runs south not north. I am afraid it will blow out his dam running that much water through double culverts and making a river in front of our house.

SAM EBERLY, 12807 W. 21st, Wichita, KS 67235 When I received the Notice of Public Hearing for this meeting today, I read the last page, and I thought, well the other factors that we are suppose to talk about are the character of the neighborhood, the uses of the properties nearby, and the proposed detriment of the proposed property on nearby property. And I know that we understand what those things are. There is one of these issues on this last page that says previously adopted policies, and I am not going to discuss anything else but previously adopted policy.

I would like to read a portion of a Reserve Agreement that I was required to sign back in 1990 when I got a building permit for my latest business building at Eberly Farm. It says in part, "Whereas to ensure protection of the interest of the safety of the public it becomes necessary that Sedgwick County, State of Kansas, provide flood protection and preserve the natural drainage way through the establishment of a reserve within the property below listed, and then list my property by legal description." It goes on to say, "That the party of the second part agrees with the party of the first part, (I am the party of the second part) that the tract is necessary for the protection and the health and welfare of the County". It goes on to say at the very end "Provided further that no building shall be constructed on or within the said reserve nor shall any fill, change of grade, creation of channel or other work be carried on." It describes the exact floodway that I can not do this, and I have a map, and part of it is in the 100 year floodway, and part of it is not in the floodplain, but I was required to sign this document.

You have seen here today the elevations of how much of this property is in the floodway, and how much of it is in the floodplain. I can't do anything because of this requirement that I was required to sign before I could get a building permit. All I am asking is for the YMCA to be good neighbors, and I know they want to be good neighbors. I would like for them to sign the same Reserve Agreement on all of their property that is in the floodplain and floodway, just like I had to, so that they can go ahead and get a building permit for the YMCA. And I would like for them to be good neighbors and come back, and withdraw their zoning request on the property that will be commercial on the corner. I would like them to be treated like I was treated in 1990.

DEVORE, MKEC I would like to make a summary statement on the drainage. We stated we would not have any adverse impact on anyone downstream, which is the case, and that is the Wentzel property. We are going to have a very positive impact on the people to the east because we are proposing, if we get this development package, we can afford to do this to put up the berm along the west side of 135th Street and keep the floodwaters from ever getting across 135th Street from Dry Creek onto those properties. That is the very positive part of our plan. We do need to handle the water that is in the 30 acre drainage basin that comes into the ditch on the east side of 135th Street, and that is why we do need to increase some of the pipes in the lower part of that ditch down towards as it moves from south to north. We have no possibility on this 50-acre property of solving the drainage problems that Mr. Wentzel is speaking about. It is a 15,700-acre basin that drains from north of Goddard up through this property. We can, however not make it any worse, and that is what we are proposing to do. Any dirt that is filled in this floodplain will not come from offsite; it

will come from within our floodplain. Some places we will make lower to have more holding capacity for water, and others we will raise some to get some particular features out of the 100-year floodplain.

BARFIELD Mr. DeVore you mentioned the delay would have a detrimental impact on the facility. Will you explain how a two-week delay would have a detrimental impact?

DEVORE First of all, with 900 employees, you have people approaching them to change jobs and positions all the time. This new facility will give us an opportunity to create new positions and promote people, increase their salaries and hopefully, keep them working with the YMCA program in Wichita. Also, the YMCA cannot proceed with plans to go ahead, design the building, and let it out for bids until we get this kind of approval. It would be foolish on our part to spend the money until we know that we are going to get the permits to build the building there and do what we want to do with the property. Any delay right now...we hope to open the end of 2005 to January 2006, any delay will delay that time.

BARFIELD I think you need to be concerned about the neighbors. These people have indicated that they are willing to welcome you into the area, but they want you to be a good neighbor. I think in the interest of being a good neighbor, you would want them to be just as concerned and feel just as confident as you do that your facility is not going to bring any hardship on their property.

DEVORE You are right. We have gone from the last five months, Commission Mitchell was a consultant with us, Jim Weber and both of those people, together with MKEC have done extensive studies on the floodplain there, and on the flood basin, and the plans that we have for that property will not increase any run off from that property. It will not increase the amount of water from that property in that floodplain. I don't know what other experts we need to get. I would like to have Mr. Mitchell and Jim Weber speak to that, they have concluded that what we are going to do will not be detrimental to any of the neighbors.

SHERMAN I am concerned that the questions from the residents have not been adequately answered. I don't believe they are opposing the YMCA, and I don't know that the delay will be that detrimental for a two week or four week deferral. I am concerned that if their questions are not answered, I don't see why we can't take a little more time and allow them to study this more. I think the neighbor's questions should be answered, and I think all concerns should be out on the table before you proceed. I don't think the compromise for the YMCA versus the concerns of the neighbors just to answer questions and to be sure the drainage and the flooding will not be a major issue, I think that is fair. My question is two-fold. One is the delay, and the second concern that you are telling us that you have done all of the engineering, and you are ensuring that there is not going to be any additional issues for them, but they are not clear about that, and the neighbors want more time to allow them to get their questions answered.

KALLENBACH We have worked with the neighbors; we have been through three meetings. It was mentioned that we got the report to their attorney 10 days late. It was a week. There was a lot of work to do and we had tune up on it. They have had some initial comments. The platting process is usually when the drainage study gets detailed, and everyone agrees that this is what has to be done. We have done that way ahead of that on this project. It is now finished in a draft form, which we think will stand at the time of this zoning. So that is unusual that we have brought it forward this fast.

WARNER I've got a question about the commercial zoning at the corner of 21st Street and 135th Street, and some of the discussion that I have heard. Is this an afterthought?

KALLENBACH MKEC No, the very first meeting that we had, once the consultants were onboard with the YMCA, I think there may have been an initial meeting before much thought was given of how this property would be used, and where the facility was going to be placed, parking etc. But the very first meeting that we attended, which was at least three meetings ago, had the commercial on that corner and we talked about that.

AUDIENCE No we did not.

GAROFALO Have you explored in any way on that corner the possibility of neighborhood retail, or neighborhood office zoning?

KALLENBACH MKEC We think those are the types of uses that are allowed in the CUP. I think what one of the neighbors said was that they don't want bars and taverns, and he also said restaurants. We don't want bars and taverns either but we think that restaurants are compatible. They are compatible with the South Branch YMCA. You see that it is a fairly common thing to exercise; you are late for dinner, and you pick-up some food and you are off. The North Branch YMCA has something that we are not proposing at all with regard to the Home Depot. These are small 1/2-acre parcels that will only allow something like a Walgreen's; a professional office on the back side but more intense commercial is on the 21st Street side.

GAROFALO So I take it you didn't explore neighborhood office or retail.

KALLENBACH MKEC What would retail include other than office?

GAROFALO Like cleaners, etc.

KALLENBACH I think they would be very welcomed, sure. Those are allowed in the CUP.

DUNLAP Donna, would you show us on that area where the new sewage treatment area is?

MILLER That is a long ways away (off the map).

HENTZEN I became familiar with this area when I was County Commissioner on the west side. I am going to propose a 30-day deferral. I have not seen any written information from the County on this problem or from other water engineers or whatever. I don't believe the facts are strong enough that we are going to hurt the YMCA if we give enough time for us to get information directly from our own engineers.

DUNLAP Clarifications, do you also ask the County Engineers to prepare a report in that time?

HENTZEN That is what I am saying. We haven't had anything presented from them on this subject, and it has been a long time coming. I believe County Engineering should give us additional information, and something in writing for us to review.

MOTION: To defer for 30 days to July 8, 2004.

HENTZEN moved, **SHERMAN** seconded the motion.

BARFIELD I do see Mr. Jim Weber in the audience, and I had the impression that he would be addressing us today.

JIM WEBER, DEPUTY DIRECTOR FOR SEDGWICK COUNTY PUBLIC WORKS When we saw in the Wichita Business Journal that the YMCA was purchasing this site, and was interested in building a new facility out here, within the week we had sent e-mail to Dennis Schoeneback expressing concern about flooding that does occur on this corner, and suggesting that we do a meeting early in this process, rather than late in the process, to talk about how to handle it.

After they had selected a design team, MKEC and Shaffer, Johnson, Cox, and Fry, we did start talking to their engineers about the flooding and the drainage in this area. I attended a meeting in Mr. Wentzel's home in April, the meeting in the church in May, and we had other opportunities to have discussion with the folks from MKEC. And, we had suggested all along that while it was highly unusual to be doing this level of drainage work at this stage of a development that would be a good idea here because it would be a big issue.

They have prepared a draft "Flood Study and a Drainage Report." It is in a 4-inch ring binder, and we have a copy in our office. Since receiving it last week, we have had it down in the Storm Water Department and they have gone through it. It has also been in Code Enforcement where the Flood Plain Management technician resides. He has gone through it, and I will tell you that they have been talking to our staff in those two departments, and they say we have a few minor things we might want to tweak, but we don't see any big problem with the concepts.

There is an opportunity here to help the residence on the east side of 135th Street. We have a partner who is willing to spend some money out here to work on this problem. They have spoken to the County. With the help they can provide, and the somewhat limited resources we have, we think we can separate the east side of 135th Street from the flooding problem on Dry Creek, and we think we can protect them from the 100-year flood.

We would not normally expect to be taking a drainage plan of any kind for approval until it is in the platting stage. I am not telling you that we are ready to approve it today, but I am telling you that in the last week we have run through it, and conceptually we don't see that it is going to have any problems. I think Mr. Wentzel, I think has a level of concern. I understand why he is concerned, and I am personally comfortable that his situation will not be worsened. And Mike Hill has a little different problem, and I don't think he is going to be hurt.

We have three separate issues that we have to deal with here. So the long and short of it is, I don't know what kind of report you would want to see from us, but we are in receipt of their report, and we are telling them that they are on the right track, and we will talk to them some more about a few minor tweaks, but this is way in advance from when we normally get it.

BARFIELD In a situation like this, I believe that it is better to look before you leap. You have indicated in your comments several times the term that "you think" would it be of benefit to you and your staff to have a sort delay or defer for 30 days.

WEBER I don't have a position on the delay. But I was concerned about the discussion that we were just having. It sort of sounded like we are not involved or we don't know what is going on or we haven't expressed it to you. We would not normally review drainage at all on a zoning case, and so if this is a verbal report on the preliminary plat, if the Planning Commission wants something more specific, and you decide to defer their case, we are going to keep working it right on through the zoning case and through the potential plat. And after that, we will be involved in the construction out there.

DUNLAP I don't know that it was brought out. Mr. DeVore, are you the owner or the contract purchaser of this property?

DEVORE Neither. I was the agent for the YMCA when they purchased the property.

DUNLAP Is the YMCA the owner of the property?

DEVORE The YMCA is the owner of the property.

HENTZEN After hearing Jim Weber talk, it is not that I think they are keeping anything from us, it is that we don't normally have flood or drainage problem except when you are platting, and so we don't get introduced to that. I don't want to imply that they won't give us what we need to know.

SUBSTITUTE MOTION: Two-week deferral which would be June 24, 2004.

GAROFALO moved, **WARNER** seconded the motion.

MOTION FAILS: 4-4-3

DUNLAP, HENTZEN, BARFIELD, SHERMAN opposed.
MARNELL, MCKAY, MITCHELL abstaining.

ORIGINAL MOTION: To defer 30 days to July 8, 2004.

HENTZEN moved, **SHERMAN** seconded the motion.

MOTION CARRIES: 8-0-3

MARNELL, MCKAY and **MITCHELL** abstaining.

11. **Case No.: ZON2004-28** – Dan and Shirley Warren (applicant/owner) Request Zone Change from “SF-5” Single-family Residential to “LC” Limited Commercial on property described as;

Lot 22, Block 1, Orchard Park Addition. Generally located South of Central and east of Baehr.

BACKGROUND: The applicants are seeking “Limited Commercial” zoning on a platted lot located approximately 100 feet south of west Central, and east of Baehr. The lot is .16 acre in size. The applicants own the land located immediately to the north of the application area that is already zoned “LC.” This northern tract has frontage along Central. The applicants seek to incorporate the application area with the “LC” land located to the north to create a larger commercial site that would accommodate a larger retail center. The combined site would be approximately 20,000 square feet. No specific users for the site have been identified, however 30 percent of the site developed with retail uses could generate 252 average daily trips. The seller of the land to the applicants is also the owner of the single-family lot located immediately south of the application area.

The properties located to the north and east are zoned “LC” Limited Commercial. The northern tract is vacant, while the eastern tract developed with a retail establishment. The southern boundary of the “LC” tract located to the east extends 50 feet further south than the applicant’s property. To the west, the “GO” zoning stops at the northern boundary of the application area. Land to the south and west is zoned “SF-5” Single-family Residential, and is developed with residences.

CASE HISTORY: The subject property is platted as part of the Orchard Park Addition, which was recorded May 23, 1929.

ADJACENT ZONING AND LAND USE:

NORTH: “LC” Limited Commercial; vacant
SOUTH: “SF-5” Single-family Residential; residence
EAST: “LC” Limited Commercial; retail store
WEST: “SF-5” Single-family Residential; residence

PUBLIC SERVICES: Baehr is an unpaved residential street with 30 feet of half street right-of-way. Typical municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide map depicts this segment of Central as appropriate for commercial uses. The plan encourages commercial tracts to be located adjacent to arterial streets or major thoroughfares that provide ingress and egress to avoid traffic congestion; and commercial development should be designed to limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.

The applicant will have to comply with all compatibility setback, noise, height and dumpster location requirements. Zoning screening will also be required where the site adjoins single-family uses.

RECOMMENDATION: Staff would not be recommending approval of this request except for the fact that it can be combined with the larger tract to the north that has frontage along Central. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to completing the following conditions within 60 days:

- A. Submittal of a “no protest” petition for the paving of Baehr.
- B. Submission of a recorded instrument that ties the application area with the applicant’s property to the north so the application area cannot be sold separately from the applicants’ property located immediately to the north.
- C. Dedication by separate instrument of a cross-lot access easement between the application area and the applicant’s property to the north.
- D. Dedication of access control except for one opening along Baehr from Central to the southern boundary of the application area.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** There is a mix of zoning and land uses in the area: “LC” Limited Commercial to the north and east, and “SF-5” Single-family Residential to the south and west. Baehr is mostly developed with residences, except for those properties that have Central Avenue frontage. Those properties with Central Avenue frontage have been rezoned to more intensive zoning districts, so this property is located in a transition zone between where single-family and non-residential uses are appropriate. The lot to the east is zoned “LC” 50 feet further to the south than is the southern boundary of the application area. To the west the “GO” zoning stops at the northern boundary of the application area.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could continue to be used as currently zoned, however the lot to the east is zoned “LC” 50 feet further to the south than is the southern boundary of the application area. Staff is supportive of the request because the application area is to be incorporated into “LC” zoned tract located to the north that is already zoned “LC,” and has frontage on Central.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed conditions of approval and other code development standards will minimize anticipated detrimental affects.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If the request is denied, the applicant will presumably suffer some loss of potential profit; while the stability of zoning would be maintained for those residential lot owners.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide map depicts this segment of Central as appropriate for commercial uses. The plan encourages commercial tracts to be located adjacent to arterial streets or major thoroughfares that provide ingress and egress to avoid traffic congestion; and commercial development should be designed to limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.
6. Impact of the proposed development on community facilities: If the recommended conditions of approval are provided, there should be minimal detrimental impacts.

DALE MILLER Planning staff is requesting Condition D be removed from the Conditions of Approval on this case, and the applicant agrees to this change.

MOTION: To approve removing Condition D.

DUNLAP moved, **BARFIELD** seconded the motion, and it carried (11-0).

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- 12a. **Case No.: CUP2004-18 DP156 Amendment #3 (Associated with ZON2004-12)** – Guild of Professional Photographers c/o Gary Armstrong (owner); Shamrock Advisors, Inc. c/o Shawn Penner (contractor purchaser); Baughman Company c/o Russ Ewy (agent); Insite Real Estate Group c/o Dan Unruh (agent) Request Amendment of the Killarney West Commercial Community Unit Plan;

and

- 12b. **Case No.: ZON2004-12 (Associated with CUP2004-18 DP156 Amendment #3)** - Guild of Professional Photographers c/o Gary Armstrong (owner); Shamrock Advisors, Inc. c/o Shawn Penner (contractor purchaser); Baughman Company c/o Russ Ewy (agent); Insite Real Estate Group c/o Dan Unruh (agent) Request Zone change from "NR" Neighborhood Retail and "MF-29" Multi-family Residential to "LC" Limited Commercial on property described as;

Lot 1, Linder Addition together with Part of Lot 1 & Reserve Valentine Addition. Generally located 1/4 mile south of 37th Street North and on the east side of Woodlawn.

BACKGROUND: The contract purchaser owns four acres of property that is zoned "LC" Limited Commercial and located immediately south of the area proposed for rezoning from "NR" Neighborhood Retail and "MF-29" Multi-Family to "LC" Limited Commercial. Since the area proposed for rezoning is 2.7 acres in size, the contract purchaser will have 6.7 acres of contiguous property zoned "LC" Limited Commercial and held under unified control; therefore, Section III-C.2.b. of the Unified Zoning Code requires that the area proposed for rezoning be included in a Community Unit Plan (CUP). Since the contract purchaser's four acres to the south of the area proposed for rezoning is Parcels 1, 3, and 4 of DP-156 Killarney West CUP, the application is to rezone 2.7 acres to "LC" Limited Commercial as well as to amend DP-156 to include the area for proposed for rezoning in DP-156 as Parcel 5 (see attached CUP).

Parcel 1 of the contract purchaser's property is developed with a car wash. Parcel 4 of the contract purchaser's property is developed with a retail center. Parcel 3 is proposed to be developed with a retail center, and Parcel 5 is proposed to be developed with a restaurant and two office buildings (see attached Site Plan). Planning staff has reviewed the proposed rezoning and CUP amendment and agrees with the proposal with two exceptions.

First, an access drive to Woodlawn is proposed for both Parcel 3 and Parcel 5, which would allow a total of three access drives to Woodlawn for the 584 feet of frontage for DP-156, including only a 30-foot separation of the drives on Parcel 2 and 3. The Access Management Policy indicates that DP-156 should be permitted only two access drives to Woodlawn and that the drives should be separated by a minimum of 200 feet, with one access drive limited to right turns only. To maintain consistency with the Access Management Policy, planning staff recommends Parcels 3 and 5 be permitted a single full-movement shared drive to Woodlawn and that the drive be separated from the existing access drive to Parcel 2 by a minimum of 200 feet.

Second, 200 square feet of monument signage is proposed for Parcel 5; however, Parcel 5 is permitted only 160 square feet of monument signage by the Sign Code. Allowing 200 square feet of monument signage for Parcel 5 would be significantly in excess of the amount of signage permitted were the property not to be in a CUP. Additionally, the amount of monument signage requested for Parcel 5 significantly exceeds the amount of monument signage permitted by the CUP for the contract purchaser's other parcels. Parcels 1 and 4 are each permitted 50 square feet of monument signage and Parcel 3 is permitted 100 square feet of monument signage. Planning staff recommends that Parcel 5 also be limited to 100 square feet of monument signage to maintain consistency within the CUP and to mitigate the negative impacts that a large amount of signage can have on the single-family residences located immediately across Woodlawn to the west.

CASE HISTORY: The area proposed for rezoning was partially zoned "NR" Neighborhood Retail and was platted as the Linder Addition in 1996 to allow a photography studio that has since closed. The remainder of the contract purchaser's property was zoned "LC" Limited Commercial, included in DP-156 Killarney West Commercial CUP, and platted as the Valentine Addition in 1994.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29"	Apartments
SOUTH: "LC"	Vehicle repair, vacant commercial land
EAST: "MF-29" & "SF-5"	Church, single-family residences
WEST: "SF-5"	Single-family residences, park

PUBLIC SERVICES: The site has access to Woodlawn, a four-lane arterial street. Traffic volumes on Woodlawn are approximately 13,000 vehicles per day and are projected to increase to approximately 20,000 vehicles per day in the 2030 Transportation Plan, which recommends Woodlawn remain a four-lane arterial street. As proposed, increased commercial development generated by subject property would not generate sufficient traffic in the peak hour to trigger the requirement for a traffic study to determine the necessary street improvements to handle the additional traffic generated by the subject property. Water and sewer service are available to serve the property.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide in the Comprehensive Plan indicates that the site is appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial uses be located adjacent to arterial streets; in compact clusters; and have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. The proposed commercial development conforms to the Wichita Land Use Guide and the Commercial Locational Guidelines.

RECOMMENDATION: Based on the information available prior to the public hearing, planning staff recommends the request be APPROVED subject to the following conditions:

1. The following shall be added to General Provision #10: The permitted location of and movements permitted for access openings to Parcel No. 3 and Parcel No. 5 shall be determined by the City Traffic Engineer.
2. General Provision #5 shall be revised to remove the Parcel 3 and Parcel 5 descriptions and the following shall be added: Parcels 3 and 5: A total of three monument signs each no greater than 100 sq. ft. in size and 20 feet in height on Woodlawn. The three signs shall be spaced a minimum of 100 feet apart and shall share uniform design, materials, and colors.
3. Per the requirements of an administrative adjustment approved June 11, 2001, the following shall be added to the end of the first paragraph of General Provision #5: "All signs shall be spaced 150 feet apart regardless of ownership, except as noted for Parcels 3 and 5. Ground signs for each parcel shall be permitted as follows:"
4. The CUP shall be revised to reflect the dedication of additional right-of-way for Woodlawn from the Linder Addition per General Provision #18 as well as to reflect the correct right-of-way for Woodlawn from the Valentine Addition.
5. Prior to publishing the ordinance establishing the zone change and no later than 180 days after approval of the zone change and CUP amendment by the Governing Body, a document shall be recorded with the Register of Deeds indicating that the area to be rezoned includes special conditions for development on this property (referenced as DP-156 Killarney West Commercial CUP).
6. Four 24" x 36" and one 11" x 17" revised copies of the C.U.P. shall be submitted to the Metropolitan Area Planning Department prior to publishing the ordinance establishing the zone change and no later than 180 days after approval of the zone change and CUP amendment by the Governing Body.
7. The Metropolitan Area Planning Department may declare the zone change and CUP amendment null and void for failure to meet any of the foregoing conditions of approval.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is primarily characterized by the commercial developments near the intersections of Woodlawn with K-96 and 37th Street North. Over 60 percent of the frontage along Woodlawn between K-96 and 37th Street North is zoned for commercial uses, and most of the commercially-zoned property in the area is developed, primarily with retail and other commercial uses that are proposed for the subject property. The request is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is currently zoned "NR" Neighborhood Retail and "MF-29" Multi-Family Residential. Given that the "MF-29" portion of the subject property is landlocked, it is unlikely that multi-family development will occur. The proposed commercial development of the property is suitable given the property's location along an arterial street developed with numerous commercial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval, including the limitation on the proposed uses, signage restrictions, and landscaping requirements should mitigate detrimental affects on surrounding properties.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide in the Comprehensive Plan indicates that the site is appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial uses be located adjacent to arterial streets; in compact clusters; and have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. The proposed commercial development conforms to the Wichita Land Use Guide and the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: The recommended limitations on access to Woodlawn should mitigate negative impacts of the proposed development on community facilities.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

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13. **Case No.: CON2004-19** – C Creek, LLC, c/o Jay W. Russell (owner); Baughman Company, PA, c/o Russ Ewy (agent) Request Conditional Use to permit a swimming pool on property zoned "SF-5" Single-family Residential on property described as;

Reserve D, Crystal Creek Addition, Wichita, Sedgwick County, Kansas
TOGETHER WITH

That part of Reserve "A", Crystal Creek Addition, Wichita, Sedgwick County, Kansas described as follows: Beginning at the SW corner of Reserve "D" in said Crystal Creek Addition; thence N84degrees 40'31"E along the south line of said Reserve "D", 78.23 feet to the SE corner of said Reserve "D"; thence S78degrees 44'49"W, 76.05 feet to a point on the west line of said Reserve "A", said point also being on the easterly right-of-way of Shiloh St. as dedicated in said Crystal Creek Addition; thence northwesterly along the west line of said Reserve "A", being a curve to the left, having a central angle of 02 degrees 28'03" and a radius of 192.00 feet, an arc distance of 8.27 feet, (having a chord length of 8.27 feet bearing N23 degrees 31'25"W), to the point of beginning. Generally located Southeast of the intersection of Boston and Shiloh.

BACKGROUND: The applicant requests a Conditional Use to permit a neighborhood swimming pool on a 0.27-acre lot zoned "SF-5" Single-family Residential. The property is located southeast of the intersection of Shiloh Street and Boston Street approximately one block north of the intersection of Shiloh with Harry Street. The property is undeveloped. A neighborhood swimming pool requires a Conditional Use in "SF-5" unless the swimming pool is a designated use on the subdivision plat.

The property is located within an area being developed as a single-family development, Ballyclare. It abuts a large reserve for drainage serving both Ballyclare and DP 265 Crystal Creek C.U.P., which is approved for commercial use and located to the southeast along Harry.

The attached site plan shows a 16-foot by 32-foot swimming pool, six parking spaces (including an ADA designated space), and a 10-foot by 20-foot cabana for restrooms and pool equipment located south of the pool. A zoning adjustment will be required to allow parking in the front setback as close as eight feet from the property line, as shown on the proposed site plan.

Section IV-B.3 of the UZC requires screening in the form of decorative fencing, evergreen vegetation, or landscaped earth berms along the east and south property lines. The Landscape Ordinance requires a landscaped street yard and parking lot screening along Boston Street and Shiloh Street, and a landscape buffer along the east and south property lines. Planning staff recommends that the required landscaping be installed per a landscape plan to be approved by planning staff.

CASE HISTORY: The subject property is platted as part of Reserve D, Crystal Creek Addition, recorded August 20, 2003.

A portion of the lot was approved as DR 75-24 (approved by BoCC September 18, 1975) for construction of a sanitary sewer lagoon as an interim facility for surrounding subdivisions until construction of Four-Mile Creek Sewer System.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Vacant
EAST:	"SF-5"; "LC"	Vacant
SOUTH:	"SF-5"	Vacant
WEST:	"SF-5"	Vacant

PUBLIC SERVICES: The subject property has access to Shiloh Street and Boston Street, which are two-lane residential streets. Water, sewer, and other municipal services will be provided to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance per a landscape plan approved by the Planning Director prior to the issuance of a building permit.
3. Screening in accordance with Section IV -B.3 of the Unified Zoning Code shall be provided along the east property line.
4. Prior to the issuance of a building permit, an administrative adjustment to permit parking within the front setback shall be acquired.
5. Development and use of the subject property for a neighborhood swimming pool shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
6. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of a developing single-family residential neighborhood. The surrounding properties are zoned "SF-5" Single-family Residential and are currently being developed with single-family residences and associated open space reserves. A neighborhood swimming pool is accessory to and customarily associated with the zoning, uses, and character of a low-density residential area.
2. Extent to which removal of the restrictions will detrimentally affect nearby property. Locating a neighborhood swimming pool within a residential development will introduce more traffic and noise for the nearby residential properties. However, the recommended conditions of approval pertaining to screening and landscaping should address these problems. The proposed neighborhood swimming pool most likely will be an amenity to the neighborhood.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should be minimal and will not exceed the capacity of the street.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

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14. **Case No.: CON2004-20** – Maple Group, LLC, c/o Jay W. Russell (owner); Baughman Company, PA, c/o Russ Ewy agent) Request Conditional Use to permit a swimming pool on property zoned "SF-5" Single-family Residential on property described as;

Lot 11, Block D, Shadow Woods Addition, Wichita, Sedgwick County, Kansas. Generally located Southeast of the intersection of Cavit and Burton.

BACKGROUND: The applicant requests a Conditional Use to permit a neighborhood swimming pool on a 0.24-acre pie-shaped lot zoned "SF-5" Single-family Residential. The property is located southeast of the intersection of Cavit Street and Burton Street approximately one block north of the intersection of Cavit with Maple. The property is undeveloped. A neighborhood swimming pool requires a Conditional Use in "SF-5" unless the swimming pool is a designated use on the subdivision plat.

The property is located within an area being developed as a single-family development, Shadow Woods. All adjacent lots are intended for single-family residences except a drainage reserve located to the southeast of the lot.

The attached site plan shows a 16-foot by 32-foot swimming pool, six parking spaces (including an ADA designated space), and a 10-foot by 20-foot cabana for restrooms and pool equipment located west of the pool. A zoning adjustment will be required to allow parking in the front setback as close as eight feet from the property line, as shown on the proposed site plan.

Section IV -B.3 of the UZC requires screening in the form of decorative fencing, evergreen vegetation, or landscaped earth berms along the northwest and south property lines. The Landscape Ordinance requires a landscaped street yard and parking lot screening along Cavit Street, and a landscape buffer along the northwest and south property lines. Planning staff recommends that the required landscaping be installed per a landscape plan to be approved by planning staff.

CASE HISTORY: The subject property is platted as Lot 11, Block D, Shadow Wood Addition, recorded May 8, 2003.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Vacant
EAST: "SF-5" Vacant
SOUTH: "SF-5" Vacant
WEST: "SF-5" Vacant

PUBLIC SERVICES: The subject property has access to Cavit Street, a two-lane residential street. Water, sewer, and other municipal services will be provided to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance per a landscape plan approved by the Planning Director prior to the issuance of a building permit.
3. Screening in accordance with Section IV-B.3 of the Unified Zoning Code shall be provided along the east property line.
4. Prior to the issuance of a building permit, an administrative adjustment to permit parking within the front setback shall be acquired.
5. Development and use of the subject property for a neighborhood swimming pool shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
6. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of a developing single-family residential neighborhood. The surrounding properties are zoned "SF-5" Single Family residential and are being developed with single-family residences and associated open space reserves. A neighborhood swimming pool is accessory to and customarily associated with the zoning, uses, and character of a low-density residential area.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Locating a neighborhood swimming pool within a residential development will introduce more traffic and noise for the nearby residential properties. However, the recommended conditions of approval pertaining to screening and landscaping should address these problems. The proposed neighborhood swimming pool most likely will be an amenity to the neighborhood.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Low Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." The proposed neighborhood swimming pool is consistent with the Land Use Guide and the identified objective of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should be minimal and will not exceed the capacity of the street.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, **MCKAY** seconded the motion, and it carried (11-0).

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15. **Case No.: ZON2004-25** – Kansas and Oklahoma Railroad c/o Brad Snow (owner); Bressler/Kelso Joint Venture c/o Pat Kelso (applicant); Greg Ferris & Mike Case (agent) Request Zone property currently unzoned railroad right-of-way to "GC" General Commercial to allow offsite sign on property described as;

A tract of land in the SE 1/4 and the SW 1/4 of Section 11-27-1W of the 6th P. M., Sedgwick County, Kansas, described as follows: An 80 foot wide strip of land with 40 feet on each side of the following described centerline: Commencing at the west southwest corner of Lot 1, Womers West Lynn Sixth Addition, Wichita, Sedgwick County, Kansas; thence Northwest along the Northerly right-of-way line of Missouri Pacific Railroad for distance 248 feet; thence Southwest at right angles to the previously described line, for a distance of 50 feet to the centerline of the right-of-way of said Missouri

Pacific Railroad to a point of beginning; thence Northwesterly along centerline of said tracts for a distance of 500 feet to a point of termination. Said tract contains 40,000 square feet more or less. Generally located North of Zoo Blvd. and east of I-235.

BACKGROUND: The applicant requests "GC" General Commercial zoning on 40,000 square feet of unzoned railroad right-of-way located north of Zoo Boulevard and west of Westdale. The applicant requests the zoning to bring an existing billboard into conformance with the City of Wichita Sign Code.

On March 26, 2003, the Office Central Inspection issued the attached letter indicating that no sign permit was required to construct a billboard on the subject property. On June 17, 2003, the applicant sent the attached letter asking for confirmation that no sign permit was required, and on that same date, the Office of Central Inspection issued the attached letter confirming that no sign permit was required for the proposed billboard. The applicant subsequently constructed a billboard on the subject property. On September 5, 2003, the Office of Central inspection issued the attached letter indicating that previous correspondence regarding no sign permit being required was in error.

The billboard that was constructed on the subject property does not conform to the requirements of the Sign Code. Section 24.04.222.1. of the Sign Code requires that there be a minimum of 500 linear feet of "GC"-zoned frontage between mile section lines in order to permit a billboard. Therefore, the applicant has requested 500 linear feet of "GC" zoning in order that the existing billboard on the subject property will conform to the requirements of the Sign Code. The attached site plan indicates the area proposed for rezoning and the location of the existing billboard.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "ROW" I-235; Big Ditch
SOUTH: "MF-18" Apartments
EAST: "SF-5" Single Family
WEST: "ROW" I-235; Big Ditch

PUBLIC SERVICES: No public services are needed for the billboard.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Parkland/Open Space." Since the subject property is railroad right-of-way that currently contains a pathway and the proposed zoning of the subject property will not impact the existing pathway, the request is consistent with the Land Use Guide of the Comprehensive Plan.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is dominated by the I-235/Zoo Boulevard interchange. While there are no commercial uses at this intersection that is uncommon for freeway interchanges, where intense commercial uses and accessory uses such as billboards are commonly located.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is unzoned railroad right-of-way and is not permitted any uses by the zoning regulations. The billboard that would be permitted by granting the "GC" zoning is accessory to the primary railroad use of the property; therefore, the property is unsuitably restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The existing billboard has had no apparent detrimental affects on nearby property. The proposed zoning will permit the existing billboard to conform with sign regulations; therefore, no detrimental affects from granting the "GC" zoning are anticipated.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Parkland/Open Space." Since the subject property is railroad right-of-way that currently contains a pathway and the proposed zoning of the subject property will not impact the existing pathway, the request is consistent with the Land Use Guide of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: No negative impacts on community facilities are anticipated.

SCOTT KNEBEL Planning staff The DAB recommended that there be a Protective Overlay added to limit off-site signs to just the existing east facing sign.

MCKAY Who told them that they didn't have to have a permit?

KNEBEL A City employee from the Office of Central Inspection.

GAROFALO My only question is why is it necessary to rezone that much?

KNEBEL The Sign Code requires 500 minimum feet of frontage within the mile of at least "GC" General Commercial zoning. There is no commercial zoning within this mile, so they need the full 500 feet on their own property.

HENTZEN The sign that is there, is it east facing?

KNEBEL Yes.

HENTZEN On to the west we are asked to rezone quite a distance. About how many feet is that?

KNEBEL West of the sign location, it is approximately 400 feet or so.

HENTZEN If we rezone it, are we doing anything and saying that you can put up another sign on west if here?

KNEBEL It would permit another sign as long as it faced to the west, and that is why the DAB recommended that there be a protective overlay be added to limit off-site signs to just this one east facing sign.

MITCHELL Is there another way of permitting the existing sign without this? Only part of railroad right-of-way is being rezoned or will have zoning of any kind. It appears to me that we are setting a precedent that we may not want to run across in the future.

KNEBEL I think this is an error that was made by City staff, and hopefully it will never be made again. The applicant could also apply for a variance of the Sign Regulations that says a sign is permitted even though the property is not properly zoned.

MCKAY Scott you said there is not commercial within a mile from here?

KNEBEL The way the Sign Code reads it is measured between section lines along the street frontage. This road angles where it cuts across the northeast corner of that section, so you don't have a full mile of linear frontage between the section lines for this road.

GIBBS The first presentation of this hearing we talked about being exempt or grandfathered. What if the zoning isn't changed? Does that sign come down, or is it exempt?

KNEBEL It wouldn't be grand-fathered, but I assume if the City could, if they choose to, issue these people a citation for failing to comply with the Code even though the City told them they didn't have to and what a court would do, I don't know.

HENTZEN Who owns the property?

KNEBEL The Kansas and Oklahoma Railroad.

HENTZEN I am concerned. We have a whole lot of railroad going east over there, and I don't want to do anything here that they can just continue to get us to do out there whatever they decide they want to do. I am talking about the City there. I think some way we have to make that sign thing work without zoning on west of that.

KNEBEL The staff is not recommending any additional zoning. All we are recommending is approval of these 40,000 square feet. The way the Code reads is that since the property is not zoned, and it is right-of-way, its permitted uses would be determined by the adjacent property's zoning that would then go to the centerline of the right-of-way. It is difficult for me to apply. If you look at the zoning map, I think you apply the "SF-5" District. I am not sure. There certainly is no commercial zoning, which is what would be required for the sign.

GIBBS Did you say that the Protective Overlay would prevent further signs, or just the addition of a face on the other side of that sign?

KNEBEL The way that the DAB recommended is that the Protective Overlay would restrict billboard signage to the existing sign, which faces to the southeast.

GIBBS It would not prevent additional signs in the other 400 feet?

KNEBEL Yes, it would restrict billboard signage to the existing sign. One sign would be allowed, and that sign faces to the southeast presently, and it wouldn't be allowed any additional faces on that sign.

MILLER I think the Protective Overlay covers the issues about any additional signs, and the thing that I think that makes this application unique from any other railroad right-of-way is that it is not zoned.

BARFIELD I am looking here at two letters, and if I am hearing correctly, both of these letters were written stating that they did not need a permit before this sign was ever constructed. These letters are dated June 17th. On September 5th they get a letter from Kurt Schroeder saying just the opposite. So what happened between June the 17th and September 5th?

MILLER There was a complete communication mix up between the people who are manning the permit desk, and who they were talking to and the actual answer.

BARFIELD How did it come to their attention that this is not in compliance? Was there a complaint, or what happened?

MILLER It may have been other City staff that brought it to their attention.

MCKAY The same department that told them they could?

MILLER No.

MITCHELL Are you saying the only other way is BZA?

MILLER To my knowledge that would be the only other way. We have a legal opinion that we have been told that the BZA can vary anything, so I think you could file a variance, but the problem would be the self imposed hardship, and all the other things that go along with a variance, and I think it would be a tough test.

MITCHELL One more time, our choices are BZA or this zoning change. Those are the only routes you can take?

MILLER To my knowledge, those would be the only two ways to make this legal.

GREG FERRIS, FERRIS CONSULTING I represent the owners of the sign, Bressler/Kelso Joint Venture, and the Kansas and Oklahoma Railroad, the property owner in this case. First of all, we can't go to the BZA. We have been told that by City attorneys. We met with the Law Department, and they said that because the property is not zoned the BZA cannot grant a variance when there is no underlying zoning. This was in a meeting with Gary Rebenstorf and with Doug Moshier, and they told us the only way that we could do this was through the Planning Commission.

There are three signs that fall under this situation where we built them with the City's permission, and then we were told that we couldn't. The other two we are going to the BZA because there is underlying zoning on those. But because there is no underlying zoning, and the City recognizes that our only alternative was to get the property zoned. The precedent that you might be concerned about, there really isn't one unless the City makes another error.

We are here for one reason. City staff asked us to go this route as opposed to going to court. They said is there a way to amicably go through a process through two BZA cases and one MAPC. Will you do that to help us make up for our mistake? They clearly made a mistake. The City attorneys were present, Mike Case representing the railroad, and the owner of the signs, Bressler/Kelso, were also present in the meetings when we were told this is the way that we had to go to satisfy the issue.

Not only were they told that they didn't need a permit, they were told that they didn't have to comply with City Code. So in good faith they went and spent \$100,000 constructing these signs. These signs are now there, and you will not be faced with this issue again, unless somebody wants to come in and waste their money going through a rezoning of railroad right-of-way thinking they might be able to accomplish putting in a billboard. I don't think the MAPC nor the City of Wichita would point to this as a precedent setting case because of the letters that are attached to the report. If you look at the letter from Mr. Sparkman telling us later that we needed to change, it said further cases, not the ones going backwards, but anything in the future. It wasn't until we got phone calls from the City that we are also going to include those that you now have to take those down or go through a process. The conclusion was that we would go through the BZA on two of those signs and one to the MAPC.

Our understanding of the protective overlay was that we could not build an additional sign. It did not have anything to do with the westerly face. The State has jurisdiction over that, and we are meeting with them on whether or not we may put some face on there that they approve of that is not an advertising. It might be a "Welcome to Wichita" or something like that. We are asking that with the protective overlay, that we cannot build another structure in this 500 feet. That was the DAB's concern.

KNEBEL The DAB's concern was both that there not be another structure, and that there not be a sign on the west face. That was clear to me.

FERRIS That was not cleared to me, and Mr. Kelso can testify. My understanding was that it was more about the structure, and I don't think there was any big fear that there be another face. They just don't want another sign. The State has severe regulations with those issues.

CATHERINE A. O'HARA, Outdoor Advertising Manager, KDOT Bureau of Right-of-Way, Thatcher Building, 800 Harrison, Topeka, KS 66603-3504 My responsibility is to protect our federal funding. The penalty is that we can get a \$3 million penalty if we don't do this outdoor advertising control at the State level. Basically we control the entire State, and we are required to control any highway that is part of the Interstate or a primary highway or national highway system. It is not our responsibility to control Zoo Boulevard in Wichita.

We took the position that it is not zoned commercial, or industrial but it is in a comprehensive zoning plan. A lot of Cities' will have a utility zoning, so we took the position that they couldn't have a sign on I-235 because it was not zoned commercial, or industrial. It might be unzoned in the City's eyes, but at the State, it was not zoned commercial or industrial, and that is what is required to put up a billboard. I understand that if the worse scenario is that if the courts decide that the City may have to be liable for the cost of the construction of that billboard, and at KDOT we buy a lot of signs, and we know the expense of billboards.

I oppose any zoning for the purpose of off-premise advertising signs. Especially when the zoning is 500 feet by 80 feet. KDOT's position, and our legal counsel has said we don't have the authority to tell anyone how to zone anything. We are not the zoning authority for the City of Wichita. But we can take the position that we are not going to recognize the zoning for the purpose of billboards.

It is my recommendation that off-site billboards should be prohibited on any railroad property, because if you do have commercial activity next to that property, they are the ones that invested in the manufacturing plant or the industrial activity or the business. You might have a plat come in, and then the railroad puts up billboards all over in front of their plant.

BARFIELD It appears to me these people are in a catch 22, because even if we approve the zoning, you are saying KDOT would not recognize that zoning.

O'HARA That is right, if they wanted to put any billboards on I-235. I am saying I am not controlling Zoo Boulevard, and that is where the panels reads now. The backside of that needs to remain blank, and it cannot have a commercial on it. Therefore we have to add it to our inventory. It is not really on our inventory. It is on Zoo Boulevard, but we know it is there, and we have it inventoried, so we have a place to put the files, but we are basically saying it is not a sign.

DUNLAP Did you say, "I oppose off-premise signs"?

O'HARA I oppose zoning for the purpose of off premise signs. You got the cart before the horse.

DUNLAP You oppose all zoning for all off-premise outdoor signs?

O'HARA If you have a zoning out there, and the only business activity that you are proposing on that property is so that the landowner can put a commercial billboard up there, then I would be opposed to that zoning.

DUNLAP You did not restrict that statement. This is a personnel opinion I assume, because you did not restrict that statement to state highways or federal highways. You said that you opposed all zoning for all off-premise signs everywhere, is that what you said?

O'HARA I would say that if I were a citizen.

DUNLAP That is what you did say.

O'HARA I also said our control area is this.

DUNLAP In the relation to the sign on Zoo Boulevard, you don't control Zoo Boulevard. At what angle does that sign face I-235? At what angle does it face Zoo Blvd.? Is it 90 degrees?

O'HARA I don't know, it is almost parallel, but not quite.

DUNLAP So is that facing I-235 or Zoo Blvd?

O'HARA We would take the position that...

DUNLAP You would take the position no matter what the angle that sign faces I-235.

O'HARA The backside of that sign faces I-235.

SHERMAN You mentioned something about federal funds and a fine. Could you clarify that for me? Does that apply in this instance, or was that just a general statement?

O'HARA There is a federal mandate in the agreement with the Federal Highway Administration and KDOT that we will effectively control outdoor advertising and the penalty for not doing that is 10% of the funding that is received, which would be about \$3 million. Now they have changed that and said that if you have problem with a local jurisdiction who may be zoning for the purposes of billboards, we could just withhold the funding from that particular jurisdiction, which would be what we would want to do because we would want to withhold the least funding as possible, but when you get into Wichita and Kansas City, I am talking about a little community, we would rather just withhold federal funding from them.

SHERMAN My question is that you have Zoo Boulevard, and then you have the I-235. You just stated that it doesn't affect I-235?

O'HARA Right, but I would want the records or the minutes or the protective overlay on that parcel saying that there can't be any billboards put up for I-235, because you could go ahead and if you do the 500 feet.

SHERMAN But they addressed that didn't they?

O'HARA Right.

SHERMAN My question is would federal funds be withheld?

O'HARA No, at this point and time there is not that, but if we took the position that you zoned for a billboard, and now you gave a permit for this billboard, and we would say no you can't because we don't recognize that zoning for that billboard. Then we would have to go to the next level.

SHERMAN They are saying they are going to have the Protective Overlay, which is going to take care of the problem with the back face of the sign which faces I-235.

O'HARA And no other sides can go up there.

SHERMAN So that has been answered. So if the zoning is approved to take care of this one sign, would there be a position taken that federal funds would be withheld?

O'HARA No, but I would want something in the plat or whatever that this is not recognized by the State/KDOT for advertising purposes. Basically, what I am saying is that KDOT is not recognizing the zoning change if you do it for the purpose of outdoor advertising.

FERRIS We still have to get the permit, and the sign permitting department understands the rules. They do not allow signs that violate the State rules. There is nothing that we are asking for today that jeopardizes any federal funding. This will not set a precedent.

BARFIELD Can you guarantee that there will not be any signage on the opposite side?

FERRIS We have discussed with the State the possibility of putting up a "Welcome to Wichita" sign up there. If they allow it, and the City doesn't have a problem with it that is fine.

BARFIELD I understood Ms. O'Hara to say that is a big deal.

FERRIS You can't put a commercial sign on that side.

DUNLAP Does the sign have a permit today?

FERRIS No, we can't get a permit.

DUNLAP Did it have a permit before?

FERRIS Never, they told us we didn't need one.

DUNLAP That's right. Are you going to apply for a single-face or double face permit?

FERRIS It would depend on our discussions with KDOT, and if they said that we could apply for a double face, we would do that with one commercial face. If they told us we couldn't, we would apply for a single face.

GAROFALO If we pass this with a Protective Overlay that would not permit a sign on the other side. Then what happens to your "Welcome to Wichita" sign?

FERRIS We won't put it up.

MOTION: To approve, subject to staff comments and citing the findings in their report and subject to the following provisions of Protective Overlay District #141: The subject property shall be limited to one off-site sign that has a single sign face that faces southeast. No other off-site signs or sign faces shall be permitted on the subject property.

MITCHELL moved, **MCKAY** seconded the motion, and it carried (9-2) **BARFIELD** and **DUNLAP** opposed.

16. **Case No.: ZON2004-29** – Discount Inc. c/o Jim Aboud (owner/applicant); Ferris Consulting c/o Greg Ferris (agent) Request Zone change from "LC" Limited Commercial to "OW" Office Warehouse on property described as;

The north 2 acres of Lot 12, except the west 260 feet thereof, Russell Tracts Addition. Generally located South of 33rd Street North and west of Amidon.

BACKGROUND: The applicant requests a zone change from "LC" Limited Commercial to "OW" Office Warehouse on a 0.963-acre platted tract located south of 33rd Street North and west of Amidon. The applicant also requests a Protective Overlay to limit use and site development requirements to those of the "LC" district except for adding wholesaling as a permitted use (see attached letter).

A retail/wholesale operation is currently in operation on the property although a wholesale use is not in conformance with "LC" zoning. The owner sells products at retail and also sells the products to other retailers at wholesale. The owner states that he uses only vans or box vans and no semi-tractor trailer trucks to deliver the wholesale products to other retailers, although he likely receives the shipments of the goods from semi-tractor trailer trucks. This differs from strictly retail use only in the magnitude of semi-trucks expected to deliver products to the site. In a strictly retail business, the number of deliveries received would be less because it is the final retail site, whereas in a wholesale business, outside shipments are received and then delivered to other sites.

Currently the site has a number of portable storage containers and trailers storing products for distribution. If the rezoning is approved, the owner has stated he will be constructing a larger building to house the merchandise and would eliminate the outdoor storage presently onsite.

The property to the north is zoned "LC" and "GO" General Office. A dental office is located on property zoned "GO" General Office and the "LC" property is vacant. The abutting property to the west is zoned "LC" but is occupied by a single-family residence. The abutting lot to the south is an office or perhaps a retail use and is zoned "LC". Two churches are located south of this commercial use on property zoned "SF-5" Single-family Residential. The remaining property to the southwest and all the property east of Amidon also is zoned "SF-5" and is in single-family residential use.

CASE HISTORY: The subject property is platted as a portion of Lot 12 of Russell Tracts Addition, recorded 1911.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"; "GO"	Vacant, dental office
SOUTH:	"LC"; "SF-5"	Commercial building, two churches, single-family residential
EAST:	"SF-5"	Single-family residential
WEST:	"LC"; "SF-5"	Single-family residential

PUBLIC SERVICES: The subject property has access to Amidon, a four-lane arterial street. The property has one drive opening onto Amidon and a cross-lot connection to an existing driveway on the property to the north under the same ownership. The subject property is currently served by municipal water and sewer service.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide in the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* classified the subject tract as "commercial". Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: (1) be located adjacent to arterial streets or major thoroughfares; (2) be coordinated with mass transit routes, high density residential, employment or other intensive uses; (3) have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; (4) be located in compact clusters or nodes versus extended strip development; (5) should not feed traffic directly onto local residential streets and (6) be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. Several locational guidelines of the *Comprehensive Plan* apply directly to the physical development of the application area, particularly related to location on a principal arterial, being in a compact cluster of commercial use and using the protective overlay to limit noise, lighting and other adverse impacts.

The *Unified Zoning Code* states that the "OW" district is "primarily intended to accommodate office and warehousing activities for the building trades and similar businesses with operating characteristics that do not require highly visible locations or the type of vehicular access needed for retail and high-intensity office development. The OW district is generally compatible with both the 'Commercial' and 'Industrial' designations of the *Wichita-Sedgwick County Comprehensive Plan*."

RECOMMENDATION: The Protective Overlay use restrictions and site development restrictions are key to recommending approval of the request. The P-O enhances the compatibility with the policies of the *Comprehensive Plan* and reduces incompatibility of the current use with nearby low-density residential areas. Some of the most traffic-intensive uses such as restaurants and vehicle serving uses such as car wash, convenience store, and service station are eliminated because the uses are not permitted in the "OW" district. Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to replatting and the following provisions of a Protective Overlay District:

1. The following uses shall be permitted:
 - a. Animal care, limited; automated teller machine; bank or financial institution; broadcast/recording studio; college or university; community assembly; construction sales and service (need not comply with Art. III, Sec. III-D.6.bb of the *Unified Zoning Code*); day care, limited and general; government service; library; park and recreation; office general; personal care service; personal improvement service; post office substation; printing and copying, limited; recycling collection station, private and public; retail, general; reverse vending machine; safety service; utility, minor; vocational school; wireless communication facility; and similar uses that may be established by the *Unified Zoning Code* allowed by right in both the "LC" Limited Commercial and the "OW" Office Warehouse districts.
 - b. Wholesale or business service for the expressed use of the property owner. No warehousing of goods by outside companies shall be permitted.
 - c. The following uses shall be permitted only if granted approval as a Conditional Use subject to Art. V, Sec. V-D of the *Unified Zoning Code*: animal care, general; monument sales; nurseries and garden centers; warehouse, self-service storage; and manufacturing, limited.
2. Outdoor storage and display shall be in conformance to current "LC" zoning standards, except that no portable storage containers or storage of goods in trailers shall be permitted.
3. All site development regulations, including but not limited to landscaping, signage, screening and setbacks shall be the same as the current "LC" zoning standards.
4. All delivery vehicles shall be parked west of the existing building and south of the proposed building to prevent vehicles from view from Amidon as well as the office and residential uses to the east and northeast.
5. Development shall be in general conformance to the site plan and building elevation submitted by the property owner as a part of the application.
6. The property shall be replatted within one year from approval of the zone change.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The property to the north is zoned "LC" and "GO" General Office. A dental office is located on property zoned "GO" General Office and the "LC" property is vacant. The abutting property to the west is zoned "LC" but is occupied by a single-family residence. The abutting lot to the south is an office or perhaps a retail use and is zoned "LC". Two churches are located south of this commercial use on property zoned "SF-5" Single-family Residential. The remaining property to the southwest and all the property east of Amidon also is zoned "SF-5" and is in single-family residential use.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property could continue to be used as a general retail use as well as a variety of other uses allowed by right in the "LC" zoning district. The protective overlay allows the wholesale use and those uses allowed both by the "LC" and "OW" Office Warehouse district; it would maintain the Conditional Use approval for those uses considered a conditional use in the "LC" district except for construction sales and service use, which eliminates the requirement for being a primarily retail establishment. Asphalt and concrete plant, limited is eliminated.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The protective overlay adherence to "LC" site development standards should ensure that screening, lighting, setback, and compatibility standards of the *Unified Zoning Code* and landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance are met. This should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Expansion of the building and elimination of outdoor storage containers and trailers for wholesale storage should improve the appearance of the site and be less of a detriment to the neighborhood.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide in the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* classified the subject tract as "commercial". Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: (1) be located adjacent to arterial streets or major thoroughfares; (2) be coordinated with mass transit routes, high density residential, employment or other intensive uses; (3) have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; (4) be located in compact clusters or nodes versus extended strip development; (5) should not feed traffic directly onto local residential streets and (6) be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. Several locational guidelines of the *Comprehensive Plan* apply directly to the physical development of the application area, particularly related to location on a principal arterial, being in a compact cluster of commercial use and using the protective overlay to limit noise, lighting and other aspects adverse effects.
5. Impact of the proposed development on community facilities: The proposed "OW" use at this location will generate more truck traffic, but less overall traffic than the site could potentially generate under many "LC" uses such as restaurants, car wash, convenience store, and service station that are eliminated by the "OW" zoning district.

DONNA GOLTRY Planning staff It is my understanding that the DAB recommended approval subject to staff recommendations, plus two additional concerns. One concern is that apparently there have been semi-trailers running 24 hours a day, and that is a problem for the neighbors. And so one of the requested additional conditions would be no overnight parking of vehicles that are making product deliveries to the business. The second additional condition was no extra parking in the back of the building, and no vehicle storage yard. The applicant wants to know if we can do the replat as a lot split instead, and we can.

GREG FERRIS, FERRIS CONSULTING The applicant has made some mistakes, and the plan now is to clean up this area to build a new building. The idea is the new and old building will be approved and have better curb appeal, and we will be doing landscaping along Amidon as well as on the north side that will exceed the Landscape Plan. We have asked that this not need a replat, and we understand at the time that if he chooses in the future to develop that property to the north the City will probably ask him to replat this whole area. But rather than spend the \$15-20,000 platting cost, we will agree with all the recommendations of staff, all the recommendation of the DAB. I do have letters from five of the adjoining property owners in support of the case and submit these for the record.

RICHARD VORE, 3319 N. Amidon, Wichita, KS 67204 We (referring to the Bahai' Temple) recently built there and we would like to see improvements in the building. And, we have not been active with the developments around here; we don't necessarily object to this, but in the description here, Item 4, on the top of page 4, it doesn't say anything about the south or west (referring to landscape requirements). I am concerned that it doesn't say anything about the south or west. I would concur the former performance on that lot previous to this has not been commendable.

FERRIS I don't disagree that the property is not up to the property standard today. And that is what we had said, and the idea of the way that the staff report is drawn is there will be a new building on the north and of the existing building on the east. There are trees and hedges on the south so the view will be obscured from any directions, and we will have additional landscaping as well.

MARNELL Condition #6 is that to be changed to lot split?

MOTION: To approve request per staff recommendations including additional conditions of no extra parking in the back of the building or vehicle storage yard, and no overnight parking of vehicles making project deliveries, based on the Protective Overlay and subject to lot split within one year.

BARFIELD moved, **DOWNING** seconded the motion, and it carried (11-0).

17. OTHER MATTERS

MARNELL On the 28th of this month, at 1:30 p.m. there will be a meeting of the Coordinating Committee for Transportation and this is a FYI and it is a public meeting.

The Metropolitan Area Planning Department informally adjourned at 4:45 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)